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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RANDY ROGERS and
ERNEST SCAMBLER,

No. 2:10-cv-00903-MCE-KJM

Plaintiffs,

v.

MEMORANDUM AND ORDER

BANK of AMERICA CORPORATION
aka BANK OF AMERICA, N.A.,

Defendant.

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This action arises from a series of mistaken-identity telephone calls Bank of American Corporation ("Defendant") made to Randy Rogers and Ernest Scambler ("Plaintiffs") beginning in July of 2008. Presently before the Court is Defendant's Motion to Dismiss the claims alleged against it in Plaintiffs' Complaint ("Complaint") for failure to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6).¹

¹ Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

1 Pursuant to Local Rule 230(c), opposition to a motion must be
2 filed not less than fourteen (14) days prior to the date of the
3 hearing. The date of the hearing on motion was set for July 22,
4 2010. Fourteen (14) days prior to the hearing was July 8, 2010.
5 No opposition was filed by Plaintiffs by the above date.

6 The Court notes that Plaintiffs have filed a First Amended
7 Complaint subsequent to Defendant's Motion to Dismiss. However,
8 pursuant to Federal Rule of Civil Procedure 15(a), a party may
9 only amend its pleading once as a matter of course within 21 days
10 after service of a motion under 12(b), (e) or (f). Fed. R. Civ.
11 P. 15(a)(1)(B). Defendant's 12(b) motion was served on June 11,
12 2010. Consequently, if Plaintiffs wished to amend their
13 Complaint as a matter of course, they needed to do so on or
14 before July 2, 2010. Plaintiffs' First Amended Complaint (Docket
15 No. 14) is stricken as untimely.

16 In light of the fact that no opposition was filed by
17 Plaintiffs, Defendant's Motion to Dismiss (Docket No. 11) is
18 GRANTED with leave to amend.

19 Plaintiffs may file an amended complaint not later than
20 twenty (20) days after the date this Memorandum and Order is
21 filed electronically. If no amended complaint is filed within
22 said twenty (20)-day period, without further notice, Plaintiffs'
23 claims will be dismissed without leave to amend.

24 IT IS SO ORDERED.

25 Dated: July 26, 2010

26 

27 MORRISON C. ENGLAND, JR.
28 UNITED STATES DISTRICT JUDGE