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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KZSA BROADCASTING, INC, A	)	
California corporation; DIAMOND	)	2:10-cv-01213-GEB-EFB
BROADCASTING, a California	)	
corporation,	)	
	)	<u>ORDER</u> *
Plaintiffs,	)	
	)	
v.	)	
	)	
IMMACULATE HEART RADIO	)	
EDUCATIONAL BROADCASTING, INC,	)	
a California non-profit	)	
corporation, DOUGLAS M. DAGGS,	)	
SUCCESSOR TRUSTEE, OF THE SYLVIA	)	
DELLAR TRUST, DOUGLAS M. DAGGS,	)	
SUCCESSOR TRUSTEE OF THE DELLAR	)	
FAMILY TRUST, WEST AUCTIONS,	)	
INC, GREAT AMERICAN MOVERS, INC:	)	
Roes 1-10,	)	
	)	
Defendants.	)	

Pending are Defendants Douglas M. Daggs ("Daggs") and Immaculate Heart Radio Educational Broadcasting ("IHR")'s motions to dismiss Plaintiffs' original Complaint, which were both filed on July 27, 2010. (Docket Nos. 12, 13.) Plaintiff subsequently filed a First Amended Complaint on August 22, 2010, which adds two new defendants. (Docket No. 21.)

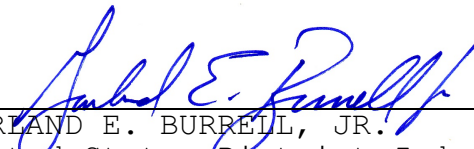
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\* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1           Although Fed. R. Civ. P. ("Rule") 15(a)(1) gives a plaintiff  
2 the right to amend his or her complaint once "as a matter of course,"  
3 that right must be exercised within a specific time frame, i.e. within  
4 twenty-one days after serving the original complaint or within twenty-  
5 one days after the defendant has filed a dismissal motion. Here,  
6 Plaintiffs First Amended Complaint was filed more than twenty-one days  
7 after Defendants' dismissal motions were filed. Therefore, it is  
8 untimely, as argued by Defendant Daggs in his Motion to Strike  
9 Plaintiffs' First Amended Complaint. (Docket No. 22.)

10           However, in light of the congested nature of this Court's law  
11 and motion and trial calendars, and in the interest of avoiding the  
12 unnecessary expenditure of judicial resources and briefing on a motion  
13 for leave to amend that does not appear necessary under the  
14 circumstances, Plaintiffs' First Amended Complaint is deemed filed as of  
15 the date on which this order is filed. Therefore, the pending dismissal  
16 motions are denied as moot and Defendant Daggs' Motion to Strike the  
17 First Amended Complaint is denied.

18 Dated: August 31, 2010

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22 GARLAND E. BURRELL, JR.  
23 United States District Judge  
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