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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY LUM, et al.,

NO. CIV. S-10-1807 LKK/DAD

Plaintiffs,

v.

O R D E R

COUNTY OF SAN JOAQUIN,
et al.,

Defendants.

_____ /

Plaintiffs in this suit bring claims against police officers and government entities concerning the events surrounding the arrest and death of plaintiffs' son. On August 23, 2010, all defendants moved to dismiss several claims against them under Fed. R. Civ. P 12(b)(6). This motion is set for hearing on September 27, 2010. Pursuant to Local Rule 230(c), plaintiffs' opposition or statements of non-opposition was due on September 13, 2010. Plaintiffs did not file an opposition or statement of non-opposition. Instead, on September 9, 2010, seventeen days after the motion was filed, plaintiffs filed an amended complaint. Pursuant

1 to Fed. R. Civ. P. 15(a)(1)(B), plaintiffs may file an amended
2 complaint twenty one days after service of a motion to dismiss.
3 Thus, plaintiff's amended complaint was timely filed.

4 It appears that some of the arguments raised in the motion to
5 dismiss portions of the initial complaint may also apply to the
6 amended complaint. Nonetheless, the court declines to address this
7 issue without briefing directly on point from either party.

8 Accordingly, the pending motion, ECF No. 10 is DENIED WITHOUT
9 PREJUDICE as moot. The hearing on this motion set for September 27,
10 2010 is hereby VACATED.

11 IT IS SO ORDERED.

12 DATED: September 17, 2010.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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