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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA and  
12 STATE OF CALIFORNIA, ex rel.  
DEREK HOGGETT and TAVIS GOOD,

No. 2:10-cv-02478-MCE-KJN

13 Plaintiffs,

14 v.

MEMORANDUM AND ORDER

15 UNIVERSITY OF PHOENIX and  
16 APOLLO GROUP, INC.,

Defendants.  
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19 Presently before the Court is a Motion to Dismiss ("Motion")  
20 (ECF No. 12) filed July 12, 2011, by Defendants University of  
21 Phoenix and Apollo Group, Inc. (together "Defendants"). On  
22 August 5, 2011, Relators Derek Hoggett and Tavis Good (together  
23 "Relators") filed a First Amended Complaint (ECF No. 21) and an  
24 Opposition to Defendants' Motion (ECF No. 22). By way of their  
25 Opposition, Relators opine that they have amended their original  
26 Complaint as of right, apparently intending that their  
27 superseding pleading render Defendants' pending Motion moot.

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1 The time in which Relators were permitted to amend their  
2 Complaint as of right expired, however, on August 2, 2011. Fed.  
3 R. Civ. Pro. 15(a) ("A party may amend its pleading once as a  
4 matter of course within...21 days after service of a responsive  
5 pleading or 21 days after service of a motion under Rule 12(b),  
6 (e), or (f), whichever is earlier."). Accordingly, Relators'  
7 First Amended Complaint is stricken without prejudice to refiling  
8 upon either: 1) the order of this Court issued in response to a  
9 properly noticed motion for leave to amend; or 2) the stipulation  
10 of the parties. To permit Plaintiff time to either properly  
11 amend the Complaint or to substantively oppose Defendants'  
12 Motion, the hearing on Defendants' Motion to Dismiss is hereby  
13 continued to Tuesday, September 6, 2011, at 2:00 p.m. in  
14 Courtroom 7. Any opposition to that Motion is to be filed not  
15 later than Tuesday, August 23, 2011, and any reply is to be filed  
16 not later than Tuesday, August 30, 2011.

17 IT IS SO ORDERED.

18 Dated: August 15, 2011

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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE