

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and
STATE OF CALIFORNIA, ex rel.
DEREK HOGGETT and TAVIS GOOD, No. 2:10-cv-02478-MCE-KJN

Plaintiffs,

V.

MEMORANDUM AND ORDER

UNIVERSITY OF PHOENIX and
APOLLO GROUP, INC.,

Defendants.

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