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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Scott Johnson,

 Plaintiff,

 v.

Esmail Rahimian, in his
individual and representative
capacity as Trustee --
Rahimian 2005 Family
Revocable Living Trust;
Parisa Rahimian, in her
individual and representative
capacity as Trustee --
Rahimian 2005 Family
Revocable Living; Tiffany Le,
an individual,

 Defendants.

No. 2:13-cv-01428-GEB-CKD

**ORDER DENYING DISMISSAL MOTION
AS MOOT**

On October 16, 2013, Defendants Esmail Rahimian and Parisa Rahimian filed a motion to dismiss Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(2) and 12(b)(7), arguing:

Defendants no longer own the property at issue. Rather, they sold it to a Tiffany T. Le (on June 7, 2013) more than one month before this case was filed on July 17, 2013. . . . This case should be dismissed pursuant to FRCP 12(b)(2) as this court lacks jurisdiction to grant injunctive relief against the former owner.

Plaintiff's sole claim for relief to which attaches Federal Jurisdiction, is the First Claim for Relief, alleging violation of the Federal ADA law and seeks injunctive relief

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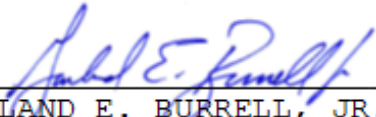
against these non-owners of the property. These Defendants would be powerless to respond to an injunction. . . . Therefore, this Court is without jurisdiction under Federal law to give Plaintiff the relief he seeks under Federal law.

This case should be dismissed as to these moving Defendants and the case remanded to State Court to adjudicate the remaining State law claims.

(Def.'s Mem. P.&A. in Supp. of Mot. to Dismiss 1:23-2:6, ECF No. 9-1.) However, Plaintiff timely filed a First Amended Complaint on October 18, 2013, (ECF No. 10), in which he added the subject property's new owner, Tiffany Le, as a defendant. The First Amended Complaint is now the operative pleading. See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989) (stating "an amended pleading supersedes the original"); see also Fed. R. Civ. P. [15(a)(1)(B) (stating that "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b)").

Since the referenced dismissal motion does not address the operative pleading, it is denied as moot.

Dated: October 30, 2013



GARLAND E. BURRELL, JR.
Senior United States District Judge