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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KATHRYN THAUT, et al.,
Plaintiffs,
v.
K. HSIEH, et al.,
Defendants.

No. 2:15-cv-0590-JAM-KJN PS

ORDER

On August 21, 2015, defendant Michael Bunuan filed a motion to dismiss plaintiffs' claims against him in their original complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 40.) Plaintiffs filed an opposition, and defendant Bunuan filed a reply. (ECF Nos. 41, 42.) However, on September 23, 2015, plaintiffs filed a first amended complaint with respect to all defendants remaining in this action, including defendant Bunuan, (ECF No. 43), in response to the court's July 24, 2015 order, which directed plaintiffs to make such a filing within 60 days of that date (ECF No. 32).

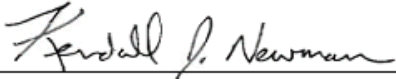
Accordingly, IT IS HEREBY ORDERED that defendant Bunuan's motion to dismiss the original complaint (ECF No. 40) is DENIED as moot.¹

¹ In his reply to plaintiffs' opposition, defendant Bunuan argues that the court should still consider and decide his motion to dismiss even in light of plaintiffs' first amended complaint because plaintiffs have run out of time to file an amended complaint as a matter of course pursuant to Federal Rules of Civil Procedure 15(a)(1). While it is true that plaintiffs may no

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IT IS SO ORDERED.

Dated: September 28, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

longer amend their complaint as a matter of course, their first amended complaint was filed in response to a court order granting them leave to do so. See Fed. R. Civ. P. 15(a)(2). Accordingly, defendant Bunuan’s argument that the court should disregard plaintiffs’ first amended complaint and proceed to rule on his motion to dismiss is without merit.