

MINUTES

CASE NUMBER: 2:16-cv-022292-LEK (USDC, Eastern District of California)

CASE NAME: Tyson Howard vs. DJI Technology, Inc., also known as
DJI Technology Co., LTD

ATTYS FOR PLA:

ATTYS FOR DEFT:

INTERPRETER:

JUDGE: Leslie E. Kobayashi

REPORTER:

DATE: 12/22/2016

TIME:

COURT ACTION: EO: COURT ORDER DENYING AS MOOT DEFENDANT'S
MOTION TO DISMISS

Plaintiff Tyson Howard, individually, and on behalf of all other similarly situated ("Plaintiff"), filed his Class Action Complaint ("Complaint") on September 26, 2016. On November 22, 2016, Defendant DJI Technology, Inc. ("Defendant") filed its Motion to Dismiss. [Dkt. no. 9.]

On December 13, 2016, Plaintiff filed his First Amended Class Action Complaint ("Amended Complaint"). [Dkt. no. 11.] Fed. R. Civ. P. 15(a)(1) states, in pertinent part:

A party may amend its pleading once as a matter of course within:

....

- (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Plaintiff timely filed the Amended Complaint within twenty-one days after service of the Motion to Dismiss.

In light of the filing of the Amended Complaint, this Court considers Plaintiff's original Complaint to be non-existent. See Lacey v. Maricopa Cty., 693 F.3d 896, 925 (9th Cir. 2012) (en banc) (stating that an "amended complaint supersedes the original, the

latter being treated thereafter as non-existent” (citations and internal quotation marks omitted)). This Court therefore DENIES Defendant’s Motion to Dismiss – which addresses the original Complaint – as MOOT. The denial is WITHOUT PREJUDICE to the filing of a new motion to dismiss addressing the Amended Complaint.

IT IS SO ORDERED.

Submitted by: Warren N. Nakamura, Courtroom Manager