

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LISA FRANCESCA FERRARI, et al.,
Plaintiffs,
v.
NATURAL PARTNER, INC., et al.,
Defendants.

Case No. 15-CV-04787-LHK

**ORDER DENYING AS MOOT
MOTIONS TO DISMISS**

Re: Dkt. Nos. 8, 15

On October 16, 2015, Plaintiffs filed the original complaint in this action, against Defendants Natural Partner, Inc.; ProThera, Inc.; Klaire Labs; and Soho Flordis International (collectively, “Defendants”). ECF No. 1. On February 5, 2016, Defendants ProThera, Inc.; Klaire Labs; and Soho Flordis International filed a motion to dismiss the original complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 8 at 1. On February 25, 2016, Defendant Natural Partner, Inc. filed a motion to dismiss the original complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(e). ECF No. 15 at 1.

On February 25, 2016, Plaintiffs filed their First Amended Complaint (“FAC”). ECF No. 24. Federal Rule of Civil Procedure 15(a)(1)(B) states that “[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under [Federal Rule of

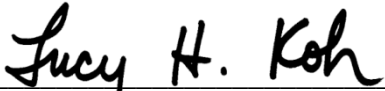
1 Civil Procedure] 12(b), (e), or (f).” Fed. R. Civ. P. 15(a)(1)(B). Because Plaintiffs filed the FAC
2 on February 25, 2016, which is twenty days after Defendants Pro Thera, Inc.; Klaire Labs; and
3 Soho Flordis International filed their motion to dismiss, Plaintiffs were allowed to file the FAC
4 without leave of the Court.

5 No Defendant has yet filed a responsive pleading or motion to the FAC. On March 14,
6 2016, the parties stipulated to granting Plaintiffs’ leave to file a Second Amended Complaint
7 (“SAC”). ECF No. 32. The Court granted this stipulation on March 15, 2016, with a deadline to
8 file the SAC by April 15, 2016. ECF No. 33. Pursuant to the parties’ stipulation, Defendants
9 must file a responsive motion or pleading to the SAC within 30 days after the SAC is filed.

10 Because Plaintiffs have filed the FAC and will, by April 15, 2016, file a SAC, Defendants’
11 motions to dismiss the original complaint are moot. As the Ninth Circuit explained in *Ramirez v.*
12 *County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015), an “amended complaint
13 supersedes the original, the latter being treated thereafter as non-existent.” Consequently, any
14 motions to dismiss the prior, now “non-existent” complaint must be “deemed moot.” *Id.*; accord
15 *Gidding v. Anderson*, 2008 WL 2168398, *5 (N.D. Cal. May 22, 2008). Defendants’ motions to
16 dismiss are therefore DENIED AS MOOT, and the April 28, 2016 hearing date for Defendants’
17 motion to dismiss is hereby VACATED. The initial case management conference, currently
18 scheduled for April 28, 2016, at 1:30 p.m., remains as set. Although Defendants’ motions to
19 dismiss are moot, the SAC must nonetheless cure the deficiencies identified therein, or the SAC
20 may be dismissed with prejudice.

21 **IT IS SO ORDERED.**

22 Dated: March 15, 2016

23 
24 _____
25 LUCY H. KOH
26 United States District Judge
27
28