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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOHN KERR, EDWARD LI, TIM
12 BARNARD, and KENNETH CURTIS,
13 individually and on behalf of all others
14 similarly situated,
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24 Plaintiff,

v.

16 ZACKS INVESTMENT RESEARCH,
17 INC., an Illinois corporation, NATIONAL
18 MARKETING RESOURCES, LLC, a
19 Missouri limited liability company;
20 PARADIGM DIRECT LLC, a Delaware
21 limited liability company; PARADIGM
22 DIRECT MARKETING, LLC, a
23 Delaware limited liability company;
24 RESPONSE NORTH, LLC, a Utah
limited liability company; and DOES 5-
50, inclusive,
Defendants.

Case No.: 3:16-cv-01352-GPC-BLM

**ORDER STRIKING PLAINTIFFS'
THIRD AMENDED COMPLAINT**

[ECF Nos. 96, 97.]

25 On July 12, 2017, without leave of the Court, Plaintiffs filed a Third Amended
26 Complaint. (Dkt. No. 96.) Plaintiffs stated that their first two Amended Complaints were
27 filed with leave of the Court, and that this is their first attempt to amend as a matter of
28 course under Federal Rule of Civil Procedure 15(a)(1)(B). (Dkt. No. 97.)

1 Plaintiffs' attempt to amend fails. It is correct that "[s]ince 2009, a plaintiff has the
2 right to amend within twenty-one days of service of the complaint (15(a)(1)(A)), or
3 within twenty-one days of service of a responsive pleading or service of a motion under
4 Rule 12(b), (e), or (f), whichever comes first (15(a)(1)(B))." *Ramirez v. Cty. of San*
5 *Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). However, the Advisory Committee's
6 Note regarding the 2009 amendment of Rule 15 clearly states that "the right to amend
7 once as a matter of course *terminates* 21 days after service of a motion under Rule 12(b),
8 (e), or (f)." Fed. R. Civ. P. 15 advisory committee's note (emphases added). Moreover,
9 "[t]he 21-day periods to amend once as a matter of course after service of a responsive
10 pleading or after service of a designated motion are *not cumulative*. If a responsive
11 pleading is served after one of the designated motions is served, for example, *there is no*
12 *new 21-day period*." *Id.* (emphases added).

13 Here, two motions to dismiss were filed on June 2, 2017, (Dkt. Nos. 81, 84.)
14 Another was subsequently filed on June 27, 2017. (Dkt. No. 91.) Although Plaintiffs
15 filed their proposed Third Amended Complaint within 21 days of the June 27, 2017
16 motion to dismiss, over 21 days have elapsed since the first two motion to dismiss were
17 filed on June 2, 2017. Plaintiffs' right to amend once as a matter of course terminated 21
18 days after service of the two June 2, 2017 motions to dismiss.

19 Accordingly, the Court **STRIKES** Plaintiffs' Third Amended Complaint. (Dkt.
20 No. 96.)

21 **IT IS SO ORDERED.**

22 Dated: July 12, 2017

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24 Hon. Gonzalo P. Curiel
25 United States District Judge
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