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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ALMA GASTELUM, et al.,
12 Plaintiff,
13 v.
14 JOHN F. KELLY, et al.,
15 Defendant.

Case No.: 17-CV-0576 W (BLM)

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS AS MOOT
[DOC. 8]**

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17 Pending before the Court is Defendant John F. Kelly’s Motion to Dismiss pursuant
18 to Federal Rule of Civil Procedure 12(b)(1), filed on June 2, 2017. [Doc. 8.]

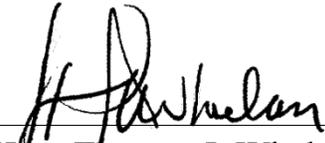
19 On June 23, 2017, Plaintiffs filed a First Amended Complaint. [Doc. 10.] As this
20 was Plaintiffs’ first amendment, filed within 21 days of service of the Motion to Dismiss,
21 it was timely, and neither the opposing party’s written consent nor the Court’s leave was
22 required. (*Certificate of Service* [Doc. 9].) See Fed. R. Civ. P. 15(a)(1)(b)–(a)(2).
23 “[A]fter amendment the original pleading no longer performs any function and is treated
24 thereafter as non-existent[.]” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), as
25 amended (May 22, 1992) (internal quotation omitted).

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1 Because the original Complaint no longer serves any function and is treated as
2 non-existent, Defendant Kelly's Motion to Dismiss it is **DENIED** as moot.

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4 **IT IS SO ORDERED.**

5 Dated: July 6, 2017

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8 Hon. Thomas J. Whelan
United States District Judge

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