

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

WARREN HEIT AND DEB HEIT,

Plaintiffs,

v.

SCOTT LIVINGSTON AND SHARI  
LIVINGSTON,

Defendants.

Case No. 2:23-cv-00507-BLW

**MEMORANDUM DECISION  
AND ORDER**

Before the Court is a Motion to Dismiss filed by the Defendants, Scott Livingston and Shari Livingston, pursuant to Federal Rule of Civil Procedure 12(b). Dkt. 5. The motion was filed on December 19, 2023. The Plaintiffs, Warren Heit and Deb Heit, filed an Opposition to the motion and a First Amended Complaint sixteen days after the motion to dismiss was filed. *First Am. Compl.*, Dkt. 8; *Pl.'s Opp'n*, Dkt. 9. The Defendants did not file a reply to the Plaintiff's Opposition, but moved to dismiss the amended complaint. Dkt. 10.

As a preliminary matter, the Plaintiff's amended complaint was timely filed within 21 days after the service of the Defendants' 12(b) motion. Fed. R. Civ. P. 15(a)(1)(B). The Defendants do not argue otherwise. *See generally Def.'s Mot.*,

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Dkt. 10. Accordingly, the Plaintiffs were permitted to amend their complaint as a matter of course without the consent or leave of any other entity. *See* Rule 15(a)(1) (a party may amend its pleadings once as a matter of course within the specified time periods).

“An amended complaint ‘supersedes the original complaint’” thereby becoming the operative pleading. *CDK Global LLC v. Brnovich*, 16 F.4th 1266 (9th Cir. 2021) (quoting *Pacific Bell Tel. Co. v. linkLine Commc’ns, Inc.*, 555 U.S. 438, 456 n.4 (2009)). As the Plaintiffs argue in their first Opposition (Dkt. 9), the Defendants’ first motion to dismiss was rendered moot by the filing of the amended complaint. *See A.I.I.L. v. Sessions*, 2020 WL 13865454, at \*1 (D. Ariz. Aug. 31, 2020) (pending motion to dismiss complaint became moot once amended complaint superseded original pleading). The Defendants are free to file a successive motion to dismiss the amended complaint. *Doe #35 v. Labrador*, 2023 WL 4269679, at \*11 (D. Idaho June 29, 2023) (a defendant may file a successive motion to dismiss an amended complaint because an amended complaint supersedes the original). In this case, the Defendants have already done so. *Def.’s Mot.*, Dkt. 10.

Therefore, **IT IS HEREBY ORDERED** that the Defendants’ motion to dismiss the complaint (Dkt. 5) is **DENIED as moot**.



DATED: March 28, 2024

*B. Lynn Winmill*

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B. Lynn Winmill  
U.S. District Court Judge