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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Vera Wathen, surviving spouse and
personal representative of the Estate of
Christopher E. Wathen, deceased,

No. CV-08-2212-PHX-FJM

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ORDER

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Plaintiff,

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vs.

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Arizona Department of Corrections, a
public entity; Dora B. Schriro, Director of
ADOC, and John Doe Schriro, her
husband; Jerry Sternes and Jane Doe
Sternes, his wife; John and Jane Doe
Officers; John and Jane Doe Supervisors;
John Does I-X and Jane Does I-X,

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Defendants.

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Plaintiff brings this action under 42 U.S.C. § 1983 for alleged civil rights violations in connection with the death of her husband, Chistopher E. Wathen. We have before us defendants Arizona Department of Corrections, Dora Schriro, and Jerry Sternes’s motion to dismiss (doc. 11), plaintiff’s response (doc. 12), and defendants’ reply (doc. 14). We also have before us plaintiff’s motion for leave to amend the complaint and proposed first amended complaint (docs. 17 & 18), and defendants’ response (doc. 19).

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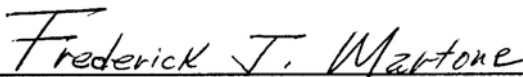
Under Rule 15(a), Fed. R. Civ. P., a party may amend a pleading once as of right at any time before a responsive pleading has been filed. As defendants correctly concede, their motion to dismiss is not a responsive filing, and plaintiff, therefore, retains the right to amend

1 the complaint as a matter of course. Rule 15(a)(1)(A), Fed. R. Civ. P.; see also Miles v.
2 Dep't of Army, 881 F.2d 777, 781 (9th Cir. 1989) (“[A] motion to dismiss the complaint is
3 not a responsive pleading.”).

4 Once a complaint has been amended, “[t]he amended complaint supersedes the
5 original, the latter being treated thereafter as non-existent.” Loux v. Rhay, 375 F.2d 55, 57
6 (9th Cir. 1967) (citations omitted). Because plaintiff has lodged a first amended complaint,
7 defendants’ motion to dismiss the original complaint is now moot and must be denied on
8 those grounds. This is, of course, without prejudice to defendants’ right file a motion to
9 dismiss plaintiff’s amended complaint.

10 Accordingly, **IT IS ORDERED DENYING** defendants’ motion to dismiss as moot
11 (doc. 11). **IT IS FURTHER ORDERED GRANTING** plaintiff’s motion for leave to
12 amend (doc. 17). The clerk shall file the lodged amended complaint under LRCiv. 15.1(c).

13 DATED this 5th day of June, 2009.

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18 Frederick J. Martone
19 United States District Judge
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