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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Artemisa Padilla

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CV-12-1767-PHX-LOA

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Plaintiff,

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ORDER

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vs.

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Banner Health dba Banner Health Del E.)
Webb Medical Center,

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Defendant.

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This case arises on *pro se* Plaintiff’s Motion for Leave to File Amended Complaint, filed on November 13, 2012. (Doc. 7) Plaintiff’s proposed 27-page First Amended Complaint is attached to the Motion, noting the changes by underlines and strikeouts as mandated by LRCiv 15.1.

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Federal Rule of Civil Procedure 15(a)(1) provides that “[a] party may amend [her] pleading *once as a matter of course* within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading” (emphasis added) Plaintiff has not yet exhausted her right to amend once as a matter of course without seeking leave of the Court. The docket reflects Defendant signed a waiver of service of summons, doc. 6, on October 22, 2012, and has 60 days from October 2, 2012 to answer or file a motion under Rule 12, Fed.R.Civ.P. If a defendant “has timely waived service” under Rule 4(d), Fed.R.Civ.P., that defendant “must serve an answer . . . within 60 days after the request for a waiver was sent” Rule 12(a)(1)(A)(ii), Fed.R.Civ.P. To date, Defendant Banner Health has neither answered nor otherwise appeared; however, the time to do so has not expired. “For purposes of Rule 15(a)(1), a

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1 responsive pleading includes an answer, . . . but not a motion.” *Stejic v. Aurora Loan Servs.,*
2 *LLC*, 2009 WL 2970497 (D. Ariz. Sept. 11, 2009) (citing Fed.R.Civ.P. 7(a) (listing allowed
3 pleadings as complaint, answer to a complaint, answer to a counterclaim designated as a
4 counterclaim, answer to a crossclaim, third-party complaint, answer to a third-party
5 complaint, and reply to an answer)). According to Rule 15’s Advisory Committee Notes to
6 the 2009 Amendments, “[I]eave to amend should be granted as a matter of course, at least
7 until the defendant files a responsive pleading.” “*After that point*, leave to amend should be
8 granted unless amendment would cause prejudice to the opposing party, is sought in bad
9 faith, is futile, or creates undue delay.” *Stejic*, 2009 WL 2970497, at *1 (quoting *Johnson v.*
10 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992)) (emphasis in original;
11 internal quotation marks omitted).

12 The Court concludes that, pursuant to Rule 15(a)(1)(B), the First Amended Complaint
13 may be filed without the Court’s leave. *See Hylton v. Anytime Towing*, 2012 WL 1019829,
14 at *2 (S.D. Cal. March 26, 2012) (citing *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638
15 (9th Cir. 1988); 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal*
16 *Practice and Procedure*, § 1481 at 661-62 (3d ed. 2010)). A first amended complaint,
17 however, supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
18 Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990).
19 After amendment, a district court will treat the original complaint as nonexistent. *Ferdik*, 963
20 F.2d at 1262. Any cause of action that was raised in the original complaint is waived if it is
21 not raised in a first amended complaint. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

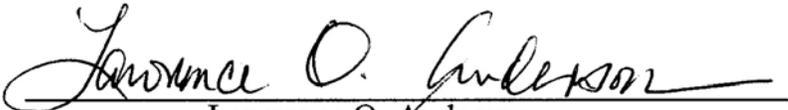
22 Based on the foregoing,

23 **IT IS ORDERED** Plaintiff’s Motion for Leave to File Amended Complaint, doc. 7,
24 is **DENIED** as unnecessary.

25 **IT IS FURTHER ORDERED** that Plaintiff must file her First Amended Complaint,
26 without underlines, strikeouts, or attaching a copy of the original Complaint, on or before
27 **Friday, November 30, 2012**, and mail a complete copy of the First Amended Complaint and
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1 any attachments to Defendant Banner Health, c/o Stephanie Quincy, Steptoe & Johnson LLP,
2 201 E. Washington St., Suite 1600, Phoenix, AZ 85004-2382.

3 Dated this 19th day of November, 2012.

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6 Lawrence O. Anderson
7 United States Magistrate Judge
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