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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHARLES FLUKER, SR.,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

) CASE NO. 1:09-cv-01193 AWI JLT

) ORDER GRANTING MOTION TO FILE FIRST
) AMENDED COMPLAINT

) (Doc. 9)

Under Fed.R.Civ.P. 15(a), a party may amend a pleading once as a matter of course within 21 days of service, or if the pleading is one to which a response is required, 21 days after service of the responsive pleading. "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed.R.Civ.P. 15(a)(2).

Here, service has not yet occurred because the Court had not yet screened Plaintiff's original complaint. As a result, Plaintiff was not required to seek the Court's leave to file his First Amended Complaint. Therefore, Plaintiff's motion for leave to file his First Amended Complaint is **GRANTED**.

IT IS SO ORDERED.

Dated: October 1, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE