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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF JOSE HERRERA, et al.,

 Plaintiffs,

 v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

 Defendants.

Case No. 1:16-cv-01053-DAD-SKO (PC)

**ORDER ON DEFENDANTS’
MOTION TO DISMISS**

(Docs. 8, 13)

Plaintiffs, the Estate of Jose Herrera, Jose A. Herrera, Martha Herrera, and Jose Herrera, are named individually and as the Successors in Interest of Jose E. Herrera, who was a state prisoner at the time of his death, filed this civil rights action pursuant to 42 U.S.C. § 1983. This action involves past conditions of confinement at Kern Valley State Prison California Correctional Institution in Tehachapi, which Plaintiffs allege caused the untimely death of Jose E. Herrera.

On October 14, 2016, Defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) asserting that Plaintiffs’ original Complaint failed to state a claim upon which relief can be granted. (Doc. 8.) Without opposing the motion,¹ on November 21, 2016, Plaintiffs filed the First Amended Complaint. (Doc. 13.) This rendered Defendants’ motion to dismiss

¹ An order issued on October 31, 2016, which set a deadline for Plaintiffs to either file an opposition to Defendants’ motion, or to file a statement of non-opposition and an amended complaint. (Doc. 12.) The First Amended Complaint sufficed to meet Plaintiffs’ responsive burden.

1 Plaintiff's original Complaint moot since the First Amended Complaint supercedes the original
2 Complaint. *Lacey v. Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1
3 (9th Cir. Aug. 29, 2012).

4 Accordingly, it is HEREBY ORDERED that Defendants' motion, filed on October 14,
5 2016, to dismiss the original Complaint for failure to state a cognizable claim, is
6 DISREGARDED as moot.²

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8 IT IS SO ORDERED.

9 Dated: December 2, 2016

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE

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² Defendants are not prohibited from filing a new motion to dismiss if they believe there are defects in Plaintiffs' pleading.