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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DERRYL TYRONE FOSTER,	)	Case No.: 1:16-cv-01839-AWI-SAB (PC)
	)	
Plaintiff,	)	
	)	<b>ORDER DIRECTING CLERK OF COURT TO</b>
v.	)	<b>FILE FIRST AMENDED COMPLAINT LODGED</b>
	)	<b>ON SEPTEMBER 28, 2017</b>
J. HUEWE, et al.,	)	
	)	[ECF No. 23]
Defendants.	)	
	)	
	)	
	)	

Plaintiff Derryl Tyrone Foster is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding against Defendants Huewe and Vargas for failure to protect and Defendants Cordova and McIntarr for excessive force in violation of the Eighth Amendment.

On September 11, 2017, Defendants filed an answer to the complaint. On September 13, 2017, the Court issued the discovery and scheduling order.

On September 28, 2017, a first amended complaint was received from Plaintiff and was lodged on the Court’s docket.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend its pleading once as a matter of course within 21 days after serving it or, if the pleading is one to which a responsive pleading is required, within 21 days after service of a responsive pleading. Fed. R. Civ. P. 15(a).

1 Otherwise, a party may amend only by leave of the court or by written consent of the adverse party.  
2 Fed. R. Civ. P. 15(b).

3 In this instance, Defendants filed a responsive pleading on September 11, 2017, and Plaintiff  
4 had 21 days thereafter to amend the complaint once as matter of course, i.e. October 2, 2017.  
5 Plaintiff's first amended complaint was received on September 28, 2017, and was lodged by the Court.

6 Accordingly, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, it is HEREBY  
7 ORDERED that:

8 1. Plaintiff's first amended complaint (ECF No. 23), shall be filed and is now the  
9 operative complaint in this action;

10 2. Defendants may file an amended answer within twenty-one (21) days from the date of  
11 service of this order, if so desired.

12  
13 IT IS SO ORDERED.

14 Dated: October 6, 2017



UNITED STATES MAGISTRATE JUDGE