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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 ANTHONY CAESAR HERNANDEZ, ) Case No.: 1:17-cv-00468-BAM (PC)  
10 )  
11 Plaintiff, ) ORDER GRANTING PLAINTIFF’S  
12 vs. ) MOTION TO RE-FILE ORIGINAL  
13 BALLAM, et. al., ) AMENDMENT  
14 ) (ECF No. 10)  
15 Defendants. )  
\_\_\_\_\_ )

16 Plaintiff Antony Caesar Hernandez is a state prisoner proceeding pro se and in forma  
17 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the  
18 jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 8.)

19 Currently before the Court is Plaintiff’s motion entitled, “Request to Refile Original  
20 Amendment,” filed on August 30, 2017. (ECF No. 10.) In the motion, Plaintiff states that he  
21 wishes to refile his original complaint due to his obtaining additional information, pursuant to  
22 Federal Rule of Civil Procedure 15. The Court construes Plaintiff’s motion as a motion for leave  
23 to amend his complaint.

24 Rule 15(a)(1) provides as follows:

25 A party may amend its pleading once as a matter of course within:

- 26 (A) 21 days after serving it, or  
27 (B) if the pleading is one to which a responsive pleading is required, 21 days after  
28 service of a responsive pleading or 21 days after service of a motion under Rule  
12(b), (e), or (f), whichever is earlier.

1 Further, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d  
2 55, 57 (9th Cir.1967).

3 In this case, Plaintiff filed his proposed amended complaint before service of process or a  
4 responsive pleading was filed, and before his original complaint was screened. Thus, Plaintiff  
5 may amend his complaint as a matter of course.

6 Accordingly, Plaintiff's motion to amend his complaint, filed on August 30, 2017 (ECF  
7 No. 10), is GRANTED. Plaintiff's first amended complaint will be screened in due course.

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9 IT IS SO ORDERED.

10 Dated: September 1, 2017

11 /s/ Barbara A. McAuliffe  
12 UNITED STATES MAGISTRATE JUDGE  
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