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

10
11 JOHN WILLIAM ARGEL,
12 Plaintiff,
13 v.
14 GODWIN, *et al.*,
15 Defendants.

Case No. 1:21-cv-00597-NONE-BAM (PC)
ORDER GRANTING MOTION TO
SUPPLEMENT THE COMPLAINT
(ECF No. 11)
THIRTY (30) DAY DEADLINE

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17 Plaintiff John William Argel (“Plaintiff”) is a state prisoner proceeding *pro se* and *in
forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint has
18 not yet been screened. Currently before the Court is Plaintiff’s motion for leave to file a
19 supplemental complaint, filed July 12, 2021. (ECF No. 11.)

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21 Federal Rule of Civil Procedure 15(d) states, “[o]n motion and reasonable notice, the court
22 may, on just terms, permit a party to serve a supplemental pleading setting out any transaction,
23 occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R.
24 Civ. P. 15(d). Rule 15 distinguishes between supplementing and amending a complaint. In an
25 amended complaint, a party may replead or add facts or claims arising prior to or
26 contemporaneously with the allegations of the original complaint. *See United States v. Hicks*, 283
27 F.3d 380, 385 (D.C. Cir. 2002); *Flaherty v. Lang*, 199 F.3d 607, 613 n.3 (2d. Cir. 1999). A
28 supplemental complaint addresses matters occurring after the original complaint is filed. Fed. R.

1 Civ. P. 15(d). “While leave to permit supplemental pleadings is favored, it cannot be used to
2 introduce a separate, distinct and new cause of action.” *Planned Parenthood of So. Arizona v.*
3 *Neely*, 130 F.3d 400, 402 (9th Cir. 1997) (internal quotation marks and citation omitted).

4 In his motion, Plaintiff states that he wishes to supplement his original complaint due to
5 new facts that occurred after the filing of the original complaint. (ECF No. 11.) Specifically,
6 Plaintiff states that prison staff has attempted to transfer him or put him in situations that would
7 jeopardize his health and safety as reprisals for filing his complaint. (*Id.*) Although Plaintiff has
8 not submitted his proposed supplemental complaint, it does appear that Plaintiff is attempting to
9 add allegations that relate back to the claims raised in the original complaint. Further, Plaintiff’s
10 complaint has not yet been screened and no defendants have been served or have appeared in this
11 action. Accordingly, Plaintiff’s motion to supplement the complaint shall be granted, and
12 Plaintiff will be permitted to file a first amended complaint which includes the new allegations.

13 Plaintiff’s first amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state
14 what each named defendant did that led to the deprivation of Plaintiff’s constitutional rights,
15 Iqbal, 556 U.S. at 678-79. Although accepted as true, the “[f]actual allegations must be
16 [sufficient] to raise a right to relief above the speculative level” *Twombly*, 550 U.S. at 555
17 (citations omitted).

18 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
19 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
20 “buckshot” complaints).

21 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
22 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s amended
23 complaint must be “complete in itself without reference to the prior or superseded pleading.”
24 Local Rule 220. This includes any exhibits or attachments Plaintiff wishes to incorporate by
25 reference.

26 Accordingly, IT IS HEREBY ORDERED that:

27 1. Plaintiff’s motion to supplement the complaint, (ECF No. 11), is GRANTED;
28 2. The Clerk’s Office shall send Plaintiff a complaint form;

1 3. Plaintiff's first amended complaint is due within **thirty (30) days** from the date of service
2 of this order; and
3 4. **If Plaintiff fails to file a first amended complaint in compliance with this order, this**
4 **action will be dismissed for failure to prosecute and failure to obey a court order.**

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6 IT IS SO ORDERED.
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8 Dated: July 14, 2021

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