

1 had been effected upon Defendants and asked that default judgment be entered against them
2 for their failure to file an answer. (Dkt. #24).

3 Avery filed a Motion to Amend his original complaint on May 18, 2010. (Dkt. #12).
4 On April 22, 2011, the Court screened Avery's amended complaint and ordered it filed and
5 served on Defendants Nangalama, Menon, Adams, Goldfield, and Penner. (Dkt. #23).

6 Avery's amended complaint supersedes his original complaint. *Bullen v. De*
7 *Bretteville*, 239 F.2d 824, 833 (9th Cir. 1956). As a result, his three pending motions with
8 regard to the original complaint (Dkt. #1) are now moot. If Defendants fail to timely respond
9 to Avery's amended complaint, he may file a new motion for default judgment. *See Gray v.*
10 *Hernandez*, No. 3:08-cv-01147, 2010 WL 6230519, at *10 (S.D. Cal. Nov. 30, 2010);
11 *Miller v. Woodford*, No. 2:07-cv-01646, 2009 WL 2365716, at *2 (E.D. Cal. July 31, 2009)
12 (report and recommendation of magistrate), *adopted*, 2009 WL 3233903, at *1 (E.D. Cal.
13 Sept. 30, 2009).

14 **Accordingly, it is hereby ordered that Plaintiff's:**

- 15 **(1) Motion to Compel Service of Complaint (Dkt. #21);**
16 **(2) Motion to Clerk For Entry Against Defendants Failure to Answer Service of**
17 **Complaint or to File Proper Waiver (Dkt. #22); and**
18 **(3) Motion for Default Judgment by the Court (Dkt. # 24)**

19 **are DENIED as moot.**
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21 DATED this 3rd day of June, 2011.
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25 /s/ Marsha S. Berzon

26 MARSHA S. BERZON
27 United States Circuit Judge
28 sitting by designation