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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VICTOR EUGENE AUSTIN, JR.,
Petitioner,
v.
PFEIFFER, et al.,
Respondent.

Case No.: 17cv1950-MMA (WVG)
**ORDER DENYING MOTION TO
DISMISS AS MOOT**
[Doc. No. 7]

On September 25, 2017, Petitioner, a state prisoner proceeding *pro se*, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. *See* Doc. No. 1. Respondent moves to dismiss the petition as barred by the statute of limitations pursuant to 28 U.S.C. § 2244(d). *See* Doc. No. 7. On February 28, 2018, the assigned magistrate judge accepted Petitioner’s amended petition for filing.¹ *See* Doc. Nos. 11, 12. Accordingly, the petition which Respondent seeks to dismiss is no longer the operative

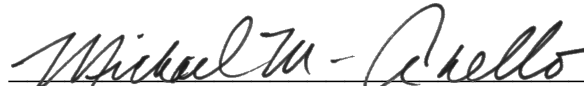
¹ Pursuant to Federal Rule of Civil Procedure 15(a)(1), “[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion [to dismiss] . . .” Fed. R. Civ. P. 15(a)(1). It is unclear whether Petitioner amended his pleading within 21 days after service of Defendants’ motion to dismiss, as it appears Petitioner did not sign or date the amended petition. *See* Doc. No. 12 at 15 of 68. In any event, if Petitioner wishes to further amend his pleadings in this action he must seek leave of Court prior to doing so. *See* Fed. R. Civ. P. 15(a)(2); *see also* *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (Federal Rule of Civil Procedure 15 applicable to habeas proceedings pursuant to 28 U.S.C. § 2242, Federal Rule of Civil Procedure 81(a)(2), and Habeas Corpus Rule 11 [later renumbered as Rule 12]).

1 pleading in this action, as an amended petition supersedes the original petition. *See*
2 *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). As such, the
3 Court **DENIES AS MOOT** Respondent’s motion to dismiss Petitioner’s petition.

4 The assigned magistrate judge remains designated to conduct all future
5 proceedings in this action as appropriate, consistent with applicable statutes and this
6 District’s Local Rules.² *See* S.D. Cal. CivLR 72.1.d; HC.2.e.1.

7 **IT IS SO ORDERED.**

8 DATE: March 7, 2018



9 HON. MICHAEL M. ANELLO
10 United States District Judge
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28 ² As such, the assigned magistrate judge will set the appropriate deadlines for filing a response to the amended petition via separate order.