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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VALDO C. OROZCO,)	1:10-cv-01599 MJS HC
)	
Petitioner,)	ORDER GRANTING PETITIONER'S MOTION
)	TO AMEND THE PETITION
)	
v.)	(Doc. 18)
)	
KELLY HARRINGTON, Warden,)	SECOND AMENDED PETITION DUE
)	WITHIN THIRTY (30) DAYS
Respondent.)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with an application for writ of habeas corpus under 28 U.S.C. § 2254. On January 18, 2011, Respondent filed a motion to dismiss, arguing that Petitioner failed to exhaust his claim that trial counsel was ineffective (based on counsel's advise to Petitioner to avoid a probation officer's report). On May 23, 2011, the Court denied the motion to dismiss, and granted Petitioner's request to stay the proceeding under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003). The Court ordered Petitioner to file a fully exhausted petition within 20 days of the order, which Petitioner did on June 12, 2011.

On August 5, 2011, Petitioner filed a request for judicial notice to inform the Court that the California Supreme Court denied his petition containing the exhausted claim, and filed a

1 motion to amend the petition to add the newly-exhausted claim to his Federal petition.
2 Respondent did not file objections to the motion to amend.

3 As Petitioner asserts that he has exhausted his claim in state court, the Court GRANTS
4 Petitioner's motion to amend to allow Petitioner to file a second amended petition containing
5 his previously exhausted and newly exhausted claims. The Court cautions Petitioner that Local
6 Rule 220 requires that an amended pleading be complete in itself, without reference to any
7 prior pleading. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) (As general rule, an
8 amended complaint or petition supersedes the original.).

9 **ORDER**

10 IT IS THEREFORE ORDERED that Petitioner motion to amend the complaint is
11 Granted. Petitioner has thirty (30) days from the entry of this order in which to file a second
12 amended petition.

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14 IT IS SO ORDERED.

15 Dated: September 27, 2011

1s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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