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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICIA ANNE ORDWAY,	}	1:11-cv-00616 LJO MJS HC
Petitioner,	}	ORDER DENYING PETITIONER'S MOTION TO LIFT STAY AS MOOT
v.	}	ORDER GRANTING PETITIONER'S MOTION TO FILE AMENDED COMPLAINT
MILLER, Warden,	}	[Doc. 17]
Respondent.	}	

Petitioner is a state prisoner proceeding pro se with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

I. MOTION TO LIFT STAY

On April 21, 2011, Petitioner filed the instant petition for writ of habeas corpus in this Court. (Pet., ECF No. 1.) On the same date Petitioner filed a motion to stay the proceedings. (Mot. to Stay, ECF No. 5.) On October 25 and 31, respectively, the Court ordered the respondent to respond to the Petition, and denied Petitioner's motion to stay without prejudice. (ECF Nos. 13, 16.) As the Court has not ordered the case stayed, Petitioner's motion to lift the stay is denied as MOOT.

II. MOTION FILE AMENDED COMPLAINT

Rule 15(a) of the Federal Rules of Civil Procedure provides, in relevant part:

1 (1) Amending as a Matter of Course.

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

3 (A) 21 days after serving it, or

4 (B) if the pleading is one to which a responsive pleading is
5 required, 21 days after service of a responsive pleading or 21 days
6 after service of a motion under Rule 12(b), (e), or (f), whichever is
7 earlier.

8 Presently, Respondent has yet to file a response. Accordingly, Petitioner may amend
9 the petition as a matter of course and the motion to file a amended petition is granted. The
10 Court shall consider the Amended Petition filed with the motion to lift the stay as the operative
11 petition, and Respondent shall respond to the claims set forth therein.

12 Petitioner is advised that an amended petition supercedes the original petition, Forsyth
13 v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th
14 Cir. 1987), and must be "complete in itself without reference to the prior or superceded
15 pleading." Local Rule 220. Accordingly, Petitioner's last filed amended petition must contain
16 all the claims Petitioner wishes to present before the Court. Plaintiff is warned that "[a]ll causes
17 of action alleged in an original complaint which are not alleged in an amended complaint are
18 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
19 Cir. 1981)).

20 **ORDER**

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Petitioner's motion for stay and abeyance is DENIED; and
23 2. Petitioner's motion to file a amended petition is GRANTED. The Court shall consider
24 the amended petition filed with the motion to lift the stay as the operative petition.

25
26 IT IS SO ORDERED.

27 Dated: November 21, 2011

28 /s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE