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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID J. VALENCIA,) 1:11-cv-01066-AWI-SKO-HC
)
Petitioner,) ORDER GRANTING IN PART AND
) DENYING IN PART PETITIONER'S
v.) MOTION TO FILE A SECOND AMENDED
) PETITION (DOC. 47)
)
CONNIE GIPSON,) ORDER DEEMING THE SECOND AMENDED
) PETITION TO INCLUDE THE FIRST
Respondent.) AMENDED PETITION (DOC. 29) AND
) THE CLAIMS SET FORTH IN
) PETITIONER'S MOTION TO AMEND
	(DOC. 47)

ORDER PERMITTING RESPONDENT TO
FILE A SUPPLEMENTAL RESPONSE TO
THE SECOND AMENDED PETITION
(DOCS. 29, 47) IN THIRTY (30)
DAYS

ORDER DISSOLVING STAY (DOC. 49)
AND DIRECTING PETITIONER TO FILE
A TRAVERSE NO LATER THAN THIRTY
(30) DAYS AFTER THE FILING OF ANY
SUPPLEMENTAL RESPONSE

Petitioner is a state prisoner proceeding pro se with a
petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.
The matter has been referred to the Magistrate Judge pursuant to
28 U.S.C. § 636(b)(1) and Local Rules 302 and 303.

1 Pending before the Court is Petitioner's motion for judicial
2 notice and motion to amend the pending first amended petition for
3 writ of habeas corpus (FAP), which had been filed by Petitioner
4 on June 14, 2012. The Respondent filed an answer to the FAP on
5 October 18, 2012. Respondent has also filed a statement of non-
6 opposition to Petitioner's motion to amend the FAP. (Doc. 50.)
7 The Court previously stayed the filing of a traverse pending
8 receipt of Respondent's input with respect to the motion to amend
9 the FAP.

10 To the extent that Petitioner seeks this Court to take
11 judicial notice of provisions of the Constitution or other
12 sources of law, Petitioner's request is DENIED. It is
13 unnecessary for this Court to take judicial notice of substantive
14 legal provisions.

15 Insofar as Petitioner moves to amend his FAP to include
16 specified claims or grounds for relief, Petitioner's motion is
17 GRANTED.

18 Although it is customary to require a petitioner to file an
19 entirely new and separate petition when leave to amend is
20 granted, in the present case the Respondent does not object to
21 the amendment and has already addressed the newly amended claim
22 or claims to some extent in the previously filed answer. (Doc.
23 45, 11-13, 20.) It therefore appears that filing a new and
24 separate petition document is not necessary.

25 Accordingly, the Court EXERCISES its discretion to permit
26 Petitioner's FAP (doc. 29, filed June 14, 2012), as augmented by
27 Petitioner's motion to amend (doc. 47), to constitute the second
28 amended petition (SAP).

1 Respondent may FILE supplemental opposition to the SAP no
2 later than thirty (30) days after the date of service of this
3 order.

4 The Court's order staying the filing of a traverse is
5 DISSOLVED.

6 Petitioner may FILE a traverse no later than thirty (30)
7 days after the filing of any supplemental response to the SAP,
8 or, if no supplemental response is filed by Respondent, no later
9 than thirty (30) days after the date on which any supplemental
10 response to the SAP was due to be filed.

11
12 IT IS SO ORDERED.

13 **Dated: November 5, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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