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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 **JERRY GALINDO MARTINEZ,**

11 Petitioner,

12 **v.**

13
14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA,**

16 Respondent.
17

Case No. 1:14-cv-01132 MJS (HC)

**ORDER GRANTING PETITIONER'S
MOTION TO LIFT STAY AND FILE FIRST
AMENDED PETITION**

[Doc. 11]

18
19 Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254. Petitioner has declined Magistrate Judge
21 jurisdiction under 28 U.S.C. § 636(c). (ECF No. 6.)

22 Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with an
23 application for writ of habeas corpus under 28 U.S.C. § 2254. On October 24, 2012, the
24 Court granted Petitioner's request to stay the proceeding under Kelly v. Small, 315 F.3d
25 1063 (9th Cir. 2003).

26 On November 17, 2012, Petitioner filed a motion to lift the stay and a motion to file
27 an amended petition. Petitioner informed the Court that the California Supreme Court
28 denied his petition containing the previously unexhausted claim, and he filed a motion to

1 amend the petition to add the newly-exhausted claim to his federal petition.

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

10 **ORDER**

11 IT IS THEREFORE ORDERED that Petitioner's motion to lift the stay and file an
12 amended Petition is GRANTED.

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14 IT IS SO ORDERED.

15 Dated: November 21, 2014

16 /s/ Michael J. Seng
17 UNITED STATES MAGISTRATE JUDGE
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