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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW L. WHITE,  
  
                                Petitioner,  
  
                                v.  
  
DAVE DAVEY,  
  
                                Respondent.

No. 2:14-cv-1427-EFB P

ORDER

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His original petition raised three claims for relief: (1) that he was denied the right to confront and cross examine an “accuser” in violation of the Sixth Amendment; (2) that he was denied his Fourteenth Amendment right to a fair trial because photographs that should have been excluded under California Evidence Code section 352 were admitted and used against him; and (3) that the trial court judge erred in ruling that the prosecutor had used due diligence in attempting to procure the attendance of a “victim/witness” at petitioner’s trial. ECF No. 1 at 7-8. The court subsequently granted petitioner’s motion to amend to add a claim based on prosecutorial misconduct and noted that any amended petition must be complete in itself. ECF No. 24. Petitioner responded by filing a “first amended petition” but alleging only a prosecutorial misconduct claim. ECF No. 25.

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1 An amended petition supersedes any earlier filed petition, and once an amended petition is  
2 filed, the earlier filed petition no longer serves any function in the case. *See Forsyth v. Humana*,  
3 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
4 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
5 1967)). Therefore, when a petitioner is allowed to amend his petition, he must write or type the  
6 amended petition so that it is complete in itself without reference to any earlier filed petition.  
7 E.D. Cal. L.R. 220. That is, petitioner must file a single amended petition that includes all  
8 information relevant to his claim(s). Thus, although he may not have intended this result,  
9 petitioner now has only his single claim (i.e. prosecutorial misconduct) pending.

10 If petitioner wishes to pursue all four of his claims, that is, those raised in the original  
11 petition and the first amended petition, he must file a second amended petition that includes all  
12 four of his claims within 30 days of the date of this order. If petitioner does not file a second  
13 amended petition within 30 days, the court will direct respondent to file a response to the first  
14 amended petition, which only includes the claim for prosecutorial misconduct, and abandons the  
15 three claims raised in the original petition.

16 So ordered.

17 DATED: April 27, 2015.

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19 EDMUND F. BRENNAN  
20 UNITED STATES MAGISTRATE JUDGE  
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