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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LOUIE GOURSAU, No. 2:16-cv-2372-CMK-P
Petitioner,
vs. ORDER
JOE LIZARRAGA,
Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is challenging his 2012 conviction out of Solano County. Petitioner has filed a request that this case be consolidated with another case, 2:16-cv-2363-MCE-CMK.

28 U.S.C. § 2243 provides that the court shall issue an order directing a response to the writ “unless it appears from the application that the applicant . . . is not entitled” relief. Where a petitioner is proceeding pro se and files a new petition before the district court has fully adjudicated the petitioner’s prior petition, the Ninth Circuit has directed that the court should construe the new petition as a motion to amend the petition rather than as a “second or successive” petition. See Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008). However, the

1 undersigned finds neither consolidation nor construing the petition as a motion to amend would
2 serve a legitimate purpose. The petitions filed in the two separate actions are identical.
3 Accordingly, there is nothing to consolidate nor would there be anything to amend. In his
4 request for this case be consolidated with his other current action, petitioner acknowledges the
5 petition filed in this action is duplicative and was sent out of an abundance of caution. The
6 undersigned interprets his request as a request to voluntarily dismiss this duplicative action.
7 Thus, instead of consolidating or construing the petition as a motion to amend, this action should
8 simply be dismissed as duplicative of case number 2:16-cv-2363-MCE-CMK, which is an active
9 case.

10 Accordingly, IT IS HEREBY ORDERED that the petition for writ of habeas
11 corpus filed in this case is dismissed, without prejudice, as duplicative of the petition filed in
12 case 2:16-cv-2363-MCE-CMK. The Clerk of the Court is directed to close this case.

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14 DATED: May 19, 2017

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16 **CRAIG M. KELLISON**
17 UNITED STATES MAGISTRATE JUDGE
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