IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICARDO ARANA,

Petitioner,

v.

TIM VIRGA, Warden,

Respondent.

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No. C 11-1972 WHA (PR)

ORDER GRANTING MOTION TO VOLUNTARILY DISMISS AND STRIKING UNEXHAUSTED CLAIM; TO SHOW CAUSE

(Docket Nos. 8, 9)

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. Respondent was ordered to show cause why the petition should not be granted based upon the eleven claims set forth in petitioner's First Amended Petition. Respondent moved to dismiss the petition on the grounds that one of the claims, Claim Five, was not exhausted. Petitioner has responded to that motion by moving to voluntarily dismiss Claim Five and proceed based only upon the other ten claims, which claims Respondent concedes have been exhausted.

Good cause appearing, petitioner's motion to voluntarily dismiss the unexhausted Claim Five (docket number 9) is **GRANTED**, and Claim Five is **STRICKEN** from the First Amended Petition. Consequently, respondent's motion to dismiss (docket number 8) is **DENIED** as moot.

Respondent shall file with the court and serve on petitioner, within ninety days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on

the other ten cognizable claims in the First Amended Petition. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty days of the date the answer is filed.

IT IS SO ORDERED.

Dated: October 11, 2011.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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