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## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

ERIC LAVELLE NICHOLS, Case No. 1:14-cv-01880-LJO-SMS HC

Petitioner,

v.

JOHN KATAVICH, Warden,

Respondent.

ORDER GRANTING PETITIONER RIGHT TO AMEND FIRST AMENDED PETITION TO INCLUDE CLAIMS ALLEGED IN ORIGINIAL PETITION OR TO PROCEED WITH FIRST AMENDED PETITION AS FILED

Doc. 15

Petitioner Eric Lavelle Nichols is a state prisoner who seeks to proceed with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 18, 2014, the Court stayed the pending petition. Following Petitioner's report that the additional claims pending before the California Supreme Court had been exhausted, the Court lifted the stay on February 4, 2015. Petitioner filed his first amended petition on February 13, 2015.

Rule 4 of the Rules Governing § 2254 Cases requires the Court to review each petition upon filing and to dismiss it if "[i]t plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing § 2254 Cases; Hendricks v. Vasquez, 908 F.2d 490 (1990). In screening the first amended petition, the Court observed it to be substantially shorter than the original petition, to include only a single claim, and to omit the exhibits attached to the original petition.

An amended pleading supersedes the original pleading and must be "complete in itself without reference to the prior or superseded pleading," Local Rule 15-220. As a result, allowing the first amended petition to proceed will eliminate the claims and exhibits that were included in the original petition, but omitted in the first amended petition. Because the Court cannot determine whether Petitioner intentionally omitted the additional claims and exhibits, the Court will grant Petitioner leave to amend the first amended petition.

The Court hereby ORDERS:

- 1. Within **thirty** (30) **days** from the date of service of this order, Petitioner may file a second amended petition incorporating into the first amended petition those claims and exhibits from the original petition that he wishes to include in the final form of his petition. The second amended petition should completely state Petitioner's claims without reference to either prior petition.
- 2. If Petitioner advises the Court, in writing, that he wishes to proceed only with the single claim set forth in the first amended petition, or if Petitioner does not file an amended petition within thirty days of this order, the case will proceed only on the claim set forth in the first amended petition.

IT IS SO ORDERED.

Dated: May 1, 2015 /s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE