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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 DAVID WAYNE LEWIS,

11 Petitioner,

12 v.

13 R.J. RACKLEY,

14 Respondent.

Case No. 1:17-cv-00449-DAD-SAB-HC

ORDER DENYING MOTION TO STRIKE
AND MOTION FOR CONSIDERATION OF
SANCTIONS

(ECF No. 27)

15
16 Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28
17 U.S.C. § 2254.

18 On June 29, 2017, Respondent filed a motion to dismiss. (ECF No. 12). On July 13,
19 2017, the Court granted Petitioner to and including August 25, 2017 to file an opposition to the
20 motion to dismiss. (ECF No. 16). On August 14, 2017, Petitioner filed a request for judicial
21 notice, wherein Petitioner requested that the Court take notice of a law review article. (ECF No.
22 17). Respondent construed the request for judicial notice as Petitioner's opposition to the motion
23 to dismiss, and filed a reply on August 22, 2017. (ECF No. 18). Subsequently, on August 30,
24 2017, the Court received Petitioner's "Motion and Memorandum of Law in Support of Motion to
25 be Excused for Cause" and "Memorandum of Law in Opposition to the Motion to Dismiss."
26 (ECF No. 19).¹

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28 ¹ The motion to be excused for cause and the opposition to the motion to dismiss were docketed together as one document.

1 On September 13, 2017, Petitioner moved the Court to strike the August 22, 2017 reply
2 and order Respondent to file a reply to Petitioner’s actual opposition. (ECF No. 20). On
3 September 25, 2017, the Court denied Petitioner’s request to strike the August 22, 2017 reply
4 and granted the request for Respondent to file a reply to Petitioner’s opposition. (ECF No. 21).
5 Respondent filed a “Reply to Motion and Memorandum of Law in Support of Motion to be
6 Excused for Cause,” and Petitioner filed a “Traverse to Reply to Motion in Support of Motion to
7 be Excused for Cause Regarding March 31, 2017 Magistrate Judge’s Order.” (ECF Nos. 24, 25).

8 On December 18, 2017, the Court issued findings and recommendation to dismiss the
9 petition. (ECF No. 26). The findings and recommendation was served on Petitioner with notice
10 provided that any objections were to be filed within thirty (30) days of the date of service of the
11 order. To date, Petitioner has filed no objections.

12 Instead, Petitioner filed the instant motion to strike and for consideration of sanctions.
13 (ECF No. 27). Petitioner contends that Respondent did not reply to Petitioner’s opposition, but
14 rather served a “Reply to Motion and Memorandum of Law in Support of Motion to be Excused
15 for Cause.” (Id. at 2). Thus, Petitioner requests that the Court strike the reply, re-order
16 Respondent to file a reply to Petitioner’s opposition to the motion to dismiss, and consider
17 imposing sanctions. (Id. at 3).

18 Contrary to Petitioner’s assertions, Respondent’s “Reply to Motion and Memorandum of
19 Law in Support of Motion to be Excused for Cause” addressed issues raised in the opposition to
20 the motion to dismiss. In the opposition, Petitioner argued that “the instant petition for writ of
21 habeas corpus is subject to equitable tolling” and that “§ 2254 is inadequate or ineffective to test
22 the legality of his detention.” (ECF No. 19 at 10, 19). Respondent addressed the issue of
23 equitable tolling and argued that ground one of the petition is governed by § 2254 in the reply.
24 (ECF No. 24 at 3–6).

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1 Accordingly, the Court HEREBY ORDERS that Petitioner's motion to strike and for
2 consideration of sanctions (ECF No. 27) is DENIED.

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4 IT IS SO ORDERED.

5 Dated: February 13, 2018


UNITED STATES MAGISTRATE JUDGE

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