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

GABRIEL CANO,

Petitioner,

No. CIV S-06-0558-LLK-TJB

vs.

ANTHONY MALFI,

Respondent.

ORDER

_____ /

On September 16, 2008, Petitioner filed what he deemed a “request for stay of abeyance” so Petitioner “may amend [his] complaint on two extra grounds” Pet’r’s Req. 1, ECF No. 25. Although Petitioner claims to seek a stay and abeyance, Petitioner’s request may also be construed as a motion to amend Petitioner’s second amended petition to add the two additional grounds. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring district courts to liberally construe pro se petition). On October 6, 2008, Respondent filed an opposition to Petitioner’s motion, arguing that: (1) the additional claims are untimely, Resp’t’s Opp’n 4-5, ECF No. 26; (2) the new claims do not relate back, *id.* at 5-6; and (3) the claims are meritless. *Id.* at 7-8. Petitioner did not file a reply.

Additional evidence is required to address Petitioner’s request. Respondent only provides two exhibits: (1) a copy of Petitioner’s state habeas petition, which raised the two additional

1 claims, filed in the California Supreme Court, Resp't's Opp'n Ex. A; and (2) a website print out
2 titled, "Docket (Register of Actions)," showing activity on Petitioner's California Supreme Court
3 habeas petition. Resp't's Opp'n Ex. B. In the California Supreme Court habeas petition,
4 Petitioner wrote that the Sacramento County Superior Court denied his state habeas petition on
5 August 29, 2006. Resp't's Opp'n Ex. A, at 8. However, a copy of Petitioner's Superior Court
6 habeas petition was not provided, and neither was the Superior Court order denying the habeas
7 petition.¹

8 Likewise, the "Docket (Register of Actions)" shows the California Supreme Court
9 received a document "regarding court of appeal filing for case #C053691." Resp't's Opp'n Ex.
10 B, at 15. This "document" presumably refers to Petitioner's habeas petition filed in the
11 California Court of Appeal. *Id.* However, a copy of the California Court of Appeal habeas
12 petition was not provided, if any, and neither was the California Court of Appeal opinion
13 deciding the habeas petition, if any.

14 IT IS HEREBY ORDERED that:

- 15 1. Respondent shall file a full copy of the Superior Court habeas petition;
- 16 2. Respondent shall file a copy of the Superior Court order deciding the habeas petition;
- 17 3. Respondent shall file a full copy of the California Court of Appeal habeas petition. If
18 none, Respondent shall file a declaration affirming that Petitioner failed to file a habeas petition
19 in the California Court of Appeal;
- 20 4. Respondent shall file a copy of the California Court of Appeal opinion deciding the
21 habeas petition, if any; and

22 ///

23
24 ¹ The record as it stands is unclear as to when Petitioner filed his habeas petition in the
25 Sacramento County Superior Court. On August 8, 2006, Petitioner filed a letter stating that "last
26 month [he] filed an additional writ in Sacramento Superior Court in regards to additional claims
[he] would like to bring" Letter 1, Aug. 8, 2006, ECF No. 12. On August 16, 2006,
Petitioner filed a letter claiming he "recently as of 6.6.06 filed an amemend [sic] complaint to
[his] appeal in the Sacramento Superior Court" Letter 1, Aug. 16, 2006, ECF No. 13.

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5. Respondent shall file the above documents within thirty days of the date of this order.

DATED: October 1, 2010.



TIMOTHY J BOMMER
UNITED STATES MAGISTRATE JUDGE