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

LANCE ARMAN CROMWELL,

Petitioner,

No. CIV S-06-2412 FCD GGH P

vs.

K. PROSPER, et al.,

Respondents.

ORDER

_____ /

By Order, filed on January 5, 2010 (docket # 12), petitioner was granted leave to file a second amended petition, setting forth all five grounds upon which he sought to proceed, should all five grounds have been exhausted in state court. Otherwise, he was informed that the matter would proceed on the amended petition, filed on December 21, 2009 (docket # 11), setting forth four grounds. Petitioner was expressly directed either to file a second amended petition, within twenty-eight (28) days, setting forth *all five grounds for relief* upon which he elected to proceed, or if the proposed fifth ground for relief was not exhausted, to so inform the court. Thereafter, the court informed the parties of the further briefing schedule.

Petitioner has purported to file a second amended petition; however, in doing so, petitioner failed to comply with the court’s order as, within the amended filing, petitioner sets forth only grounds four and five and has not incorporated all five of his claims, as he was

1 directed to do in any such amended petition. See L.R. 220. Therefore, the court will strike the
2 putative second amended petition and petitioner will be granted one last opportunity to proceed
3 on a further amended petition. See L.R. 110.

4 Accordingly, IT IS ORDERED that:

5 1. The briefing schedule for respondent's response and petitioner's reply, set forth
6 in the Order, filed on January 5, 2010 (docket # 12), is vacated;

7 2. The second amended petition, filed on February 3, 2010 (docket # 15), is
8 stricken from the record, for petitioner's failure to comply with the court's order. See, L.R. 110;
9 L.R. 220.

10 3. Petitioner must file a third amended petition setting forth *all five grounds upon*
11 *which he chooses to proceed*, provided they are all exhausted claims, within twenty-one (21)
12 days; if he fails to do so timely, this matter will proceed upon the amended petition, filed on
13 December 21, 2009 (# 11); thereafter, without further order of the court, respondents must file a
14 response to petitioner's habeas petition within sixty (60) days. See Rule 4, Fed. R. Governing §
15 2254 Cases. An answer shall be accompanied by all transcripts and other documents relevant to
16 the issues presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

17 4. If the response to the habeas petition is an answer, petitioner's reply, if any,
18 shall be filed and served within 28 days after service of the answer.

19 DATED: February 10, 2010

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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