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

STEVEN L. GARDUNO,

Petitioner,

No. CIV S-11-0469 CKD P

vs.

MIKE D. MCDONALD,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus under 28 U.S.C. § 2254. This action proceeds on the First Amended Petition filed April 4, 2011. (Dkt. No. 7.) Respondent has filed an answer and petitioner has filed a traverse. (Dkt. Nos. 14, 23.) Pending is petitioner’s January 3, 2012 motion for leave to file a Second Amended Petition. (Dkt. No. 27.) Respondent has filed an opposition to the motion. (Dkt. No. 30.)

Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend shall be given freely when justice requires. In deciding whether justice requires granting leave to amend, factors to be considered include the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment. Forman v. Davis, 371 U.S. 178, 182

1 (1962).

2 Here, the First Amended Petition challenging petitioner's 2009 conviction is fully
3 briefed, and petitioner seeks to add seven new claims challenging this same conviction. He
4 asserts that such amendment is "necessary to clarify the totality of his claims" regarding the 2009
5 conviction. It is not clear why petitioner failed to include these claims in the First Amended
6 Petition. The court does not find that justice requires leave to amend in these circumstances and
7 will deny petitioner's motion to amend. This case will proceed on the First Amended Petition.

8 Accordingly, IT IS HEREBY ORDERED THAT petitioner's January 3, 2012
9 motion to amend (Dkt. No. 27) is denied.

10 Dated: April 3, 2012

11 
12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE

14 2
15 gard0469.amend