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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICOLA CHRISTOPHER BUCCI,
Petitioner,
v.
TIMOTHY E. BUSBY, et al.,
Respondents.

No. 2: 11-cv-3147 GEB KJN P

ORDER

Petitioner is a state prisoner, proceeding through counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 30, 2012, this action was administratively stayed pending petitioner’s exhaustion of claims in state court. (ECF No. 18.)

On January 23, 2014, petitioner filed a motion to vacate the stay and a motion to file an amended petition. (ECF No. 19.) Petitioner also filed a proposed amended petition. (Id.) Petitioner noticed the motion to stay for hearing before the undersigned on February 27, 2014.

On February 13, 2014, the parties filed a stipulation to lift the stay. (ECF No. 23.) In the stipulation, respondent states that he does not oppose the motion to lift the stay. (Id.)

Good cause appearing, IT IS HEREBY ORDERED that:

1. Petitioner’s motion to lift the stay (ECF No. 19) is granted; the hearing set regarding this motion for February 27, 2014, before the undersigned is vacated; the motion by petitioner’s counsel to appear at this hearing telephonically (ECF No. 21) is denied as

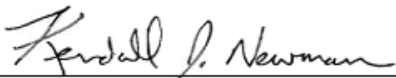
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unnecessary;

2. Pursuant to stipulation by the parties, respondent is granted ninety days to file a motion to dismiss on procedural grounds; if respondent files such a motion, petitioner's opposition is due thirty days thereafter; respondent's reply is due fifteen days thereafter; and after reviewing the pleadings, the court will set a hearing for the motion to dismiss, if appropriate; and
3. Petitioner's motion to file the amended petition is deferred pending resolution of the motion to dismiss.

Dated: February 20, 2014

buc3147.ord


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE