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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUDY S. GONZALES,
Petitioner,
v.
CONNIE GIPSON,
Respondent.

No. 2:13-cv-1347-EFB P

ORDER

Petitioner is a state prisoner proceeding without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He commenced this action with a petition filed on July 5, 2013. ECF No. 1. On October 7, 2013, the court directed the Clerk of the Court to serve the petition and motion to stay on the Attorney General and ordered that a response be filed within 60 days. ECF No. 6.

Petitioner has filed a motion to stay this action pending a ruling from the California Supreme Court on his state court petition. ECF No. 5. He has also filed a motion to amend, which includes notice that the California Supreme Court denied his state court petition on September 11, 2013. ECF No. 9.

Rule 15(a)(1) provides that “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under

1 Rule 12(b), (e), or (f), whichever is earlier.” Here, petitioner moved to amend his petition before
2 any responsive pleading or motion was served. Thus, petitioner may amend his petition “once as
3 a matter of course,” without the court’s leave. *See* Rule 12, Rules Governing Section 2254 Cases.
4 Petitioner’s motion to amend is therefore unnecessary.

5 In addition, because petitioner represents that the California Supreme Court has issued a
6 ruling on his state court petition, his motion to stay is now moot.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner’s motion to amend (ECF No. 9) is denied as unnecessary.
- 9 2. The Clerk of the Court shall separately docket the proposed amended petition (ECF
10 No. 9 at 8-46) as an “Amended Petition.”
- 11 3. Petitioner’s motion to stay (ECF No. 5) is denied as moot.
- 12 4. The Clerk of the Court shall serve a copy of this order together with a copy of
13 petitioner’s amended petition, with any and all attachments, on Michael Patrick
14 Farrell, Senior Assistant Attorney General for the State of California.

15 Dated: October 29, 2013.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE