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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE WALLACE,  
Petitioner,  
v.  
RON E. BARNES,  
Respondent.

No. 2:14-cv-0157-MCE-EFB P

ORDER

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 18, 2014, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has filed objections. ECF No. 47. Plaintiff has also filed a motion for extension of time to complete exhaustion of some of his claims and a “motion to waive the exhaustion requirement.” ECF Nos. 46, 49.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. All three of petitioner’s recent filings are premised on a core misunderstanding. The findings and recommendations issued by

1 the magistrate judge do not recommend that the court require petitioner to complete exhaustion of  
2 all of his claims within a set time. What petitioner must do within a set time (30 days from the  
3 date of this order) is file an amended petition that contains only the claims that petitioner has  
4 exhausted thus far. If, at that time, petitioner has other claims that he is still attempting to exhaust  
5 in the state courts, he should so inform the court at the time the amended petition is filed and ask  
6 the court to stay the case until exhaustion of those claims is complete. The court may then hold  
7 the case in abeyance until the remaining claims have been exhausted. At that time, petitioner  
8 must file a motion to once again amend the petition to add these claims. *To be clear – all that*  
9 *petitioner must file in the next 30 days is a petition stating only the claims he has exhausted thus*  
10 *far and asking the court to stay the case until his remaining claims are exhausted.* Accordingly,  
11 petitioner’s objections to the findings and recommendations are inapt and his motions for  
12 extension of time and “to waive exhaustion requirements” will be denied. Petitioner must  
13 proceed according to the process ordered below.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed December 18, 2014, are adopted in full;
- 16 2. Respondent’s June 18, 2014 motion to dismiss (ECF No. 22) is granted, and the  
17 petition is dismissed with leave to amend;
- 18 3. Petitioner’s motions to amend (ECF Nos. 25, 42) and for stay (ECF Nos. 32, 40) are  
19 granted;
- 20 4. Within thirty days, petitioner shall file an amended petition stating only claims that  
21 have been exhausted pursuant to 28 U.S.C. § 2254(b);
- 22 5. Concurrently with the amended petition, petitioner shall inform the court  
23 whether he is pursuing exhaustion of other claims in state court such that the instant  
24 case should be stayed under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002);
- 25 6. Petitioner is granted permission to include within his amended petition his claim as  
26 stated in his motion “for fair and constructive notice” (ECF No. 37), provided that  
27 claim has been exhausted;
- 28 7. Petitioner’s motion “for fair and constructive notice” (ECF No. 37) is otherwise

1 denied as moot.

2 8. Petitioner's January 15, 2015 motion for extension of time (ECF No. 46) is denied; and

3 9. Petitioner's February 2, 2015 motion to waive exhaustion requirements (ECF No. 49)  
4 is denied.

5 Dated: February 12, 2015



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MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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