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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY ALTAMIRANO SERMENO,
Petitioner,
v.
M.E. SPEARMAN,
Respondent.

No. 2:14-cv-02729 DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Petitioner is now proceeding on his first amended petition. (ECF No. 9.)

Petitioner filed his initial petition on November 20, 2014. (ECF No. 1.) On August 17, 2015, then-Magistrate Judge Dale A. Drozd entered an order dismissing the petition for failure to exhaust all claims in state court. (ECF No. 8.) However, the court afforded petitioner the opportunity to file an amended petition along with a motion for stay and abeyance pursuant to Rhines v. Weber, 544 U.S. 269, 273 (2005). Petitioner then timely filed the first amended petition (ECF No. 9) and motion for stay and abeyance (ECF No. 12). On August 2, 2016, the case was reassigned to the undersigned. (ECF No. 16.) On November 23, 2016, the undersigned entered an order requiring petitioner to file a statement explaining whether he had exhausted all six claims raised in the first amended petition by raising them and receiving a ruling from the

1 California Supreme Court. (ECF No. 19.) Petitioner timely filed a statement on the record
2 affirming that all six claims were exhausted in state court. (ECF No. 21.) Thereafter, the court
3 entered an order denying petitioner’s motion to stay as moot and noting that the court would
4 address the screening of the first amended petition and petitioner’s motion for reconsideration
5 (ECF No. 23) by separate order. (ECF No. 29.)

6 Since that order, petitioner has filed several motions: (1) a motion to appoint counsel
7 (ECF No. 32); (2) two motions for expeditious review of plaintiff’s first amended petition (ECF
8 Nos. 34; 37); and (3) a motion for leave to supplement the first amended petition (ECF No. 36).
9 The court will address each of these motions below.

10 **I. Motion to Appoint Counsel**

11 Petitioner has requested the appointment of counsel. There currently exists no absolute
12 right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460
13 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage
14 of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases.
15 In the present case, the court does not find that the interests of justice would be served by the
16 appointment of counsel at the present time.

17 Accordingly, petitioner’s request for appointment of counsel (ECF No. 32) is denied
18 without prejudice to a renewal of the motion at a later stage of the proceedings.

19 **II. Motion for Leave to Supplement**

20 Under 28 U.S.C. § 2242, an application for a writ of habeas corpus “may be amended or
21 supplemented as provided in the rules of procedure applicable to civil actions.” See also Rule 12
22 of the Rules Governing § 2254 Cases (recognizing general applicability in habeas of rules of civil
23 procedure). Petitioner’s motion is governed by Federal Rule of Civil Procedure 15(a)(1), which
24 permits an amended pleading as a matter of course within 21 days after serving it.

25 The petition in this case has not yet been served on respondent and so plaintiff may still
26 amend once as a matter of course. Accordingly, the undersigned grants petitioner’s motion to
27 supplement. Petitioner shall, within 14 days of this order, file a second amended petition as a
28 separate docket entry in this case. The court will thereafter screen the second amended petition.

1 **III. Motions for Expeditious Review**

2 Plaintiff filed two motions for expeditious review of his first amended petition. (ECF
3 Nos. 34; 37.) Now that the court is granting petitioner's motion to supplement his petition, these
4 motions are moot. Accordingly, the motions will be denied as moot.

5 **IV. Motion for Reconsideration**

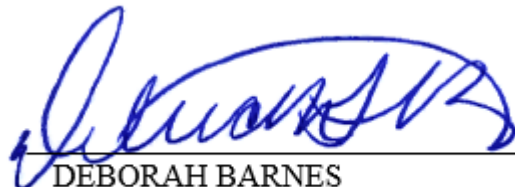
6 Additionally, plaintiff's motion for reconsideration (ECF No. 23) also concerns the first
7 amended petition and includes a request to expedite review of the first amended petition.
8 Because the court is granting plaintiff's motion to supplement the petition, this motion, too, is
9 now moot and will be denied without prejudice. If, after filing a second amended petition,
10 petitioner still believes that the court needs to address his requests for relief in the motion for
11 reconsideration, plaintiff may refile the motion at that time.

12 **V. Conclusion**

13 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 14 (1) Petitioner's motion to appoint counsel (ECF No. 32) is denied;
15 (2) Petitioner's motion for leave to supplement the petition (ECF No. 36) is granted;
16 (3) Petitioner shall, within 14 days of this order, file a second amended petition as a
17 separate entry in this case;
18 (4) Petitioner's motion for expeditious review (ECF Nos. 34; 37) are denied as moot;
19 and
20 (5) Petitioner's motion for reconsideration (ECF No. 23) is denied as moot.

21 Dated: March 30, 2017

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24 DEBORAH BARNES
25 UNITED STATES MAGISTRATE JUDGE

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