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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT RIVERA,
Petitioner,
v.
S. PEERY,
Respondent.

No. 2:16-cv-0856 KJM CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Shortly after petitioner filed his traverse, he filed a motion seeking leave to amend his petition and to stay these proceedings while he exhausts state court remedies with respect to additional claims.

Good cause appearing, the court will recommend that petitioner’s request for a stay be granted pursuant to Kelly v. Small, 315 F.3d 1063, 1070-71 (9th Cir. 2003), and that this action be stayed while petitioner exhausts state court remedies with respect to his new claims.¹ Pursuant to Kelly, petitioner’s motion for leave to amend will be denied without prejudice to renewal after he has exhausted state court remedies. Petitioner is informed that, at this point, the court makes no ruling as to whether any claim not presented in his original petition for writ of habeas corpus is

¹ In his opposition to petitioner’s motion for leave to amend and opposition to petitioner’s motion for a stay, respondent does not object to a stay being granted pursuant to Kelly.

1 timely under 28. U.S.C. § 2244(d). Such a determination will be made if and when petitioner
2 files a motion for leave to amend and then the limitations issue is raised by respondent either in
3 an opposition to a motion to amend or a motion to dismiss.

4 Accordingly, IT IS HEREBY ORDERED that petitioner's motion for leave to file an
5 amended petition for writ of habeas corpus (ECF No. 27) is denied without prejudice to renewal
6 after he has exhausted state court remedies with respect to all claims to be presented in any
7 amended petition; and

8 IT IS HEREBY RECOMMENDED that:

- 9 1. Petitioner's motion for a stay (ECF No. 28) be granted.
- 10 2. The Clerk of the Court be directed to administratively close this case;
- 11 3. Petitioner be ordered to either file a motion for leave to file an amended petition for
12 writ of habeas corpus along with the proposed amended petition, or file notice that petitioner will
13 proceed on the original petition for writ of habeas corpus within 30 days of the exhaustion of state
14 court remedies concerning any claim petitioner may wish to present in an amended habeas
15 petition.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
21 objections shall be served and filed within fourteen days after service of the objections. The
22 parties are advised that failure to file objections within the specified time may waive the right to
23 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: October 26, 2017

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE