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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY C. JOHNSON,
Petitioner,
v.
SCOTT KERNAN, et al.,
Respondents.

No. 2:17-cv-2525 JAM AC P

ORDER

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Currently before the court is respondent’s motion to dismiss the petition as unexhausted (ECF No. 22) and petitioner’s motion for stay (ECF No. 23). However, petitioner has now filed a motion to amend in which he advises the court that he has exhausted his state court remedies and requests leave to file an amended petition. ECF No. 35. Attached to the motion is a copy of the California Supreme Court’s order denying his state petition. *Id.* at 3. Since petitioner now represents that his claims are exhausted, the motion for stay will be denied as moot. Furthermore, in light of petitioner’s representation that the petition is now fully exhausted and his request to amend the petition, the motion to dismiss will be vacated and petitioner will be provided an opportunity to file an amended petition. After petitioner has filed an amended petition, or his time for doing so passes, respondent shall have an opportunity to file a new motion to dismiss or an answer.

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Accordingly, IT IS HEREBY ORDERED that:

1. Respondent's motion to dismiss (ECF No. 22) is vacated.
2. Petitioner's motion for stay (ECF No. 23) is denied as moot.
3. Within thirty days of service of this order, petitioner may file an amended petition. If petitioner fails to file an amended petition, the case will proceed on the original petition.

DATED: January 8, 2019



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE