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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DERRICK R. CALDWELL,

Petitioner,

v.

MICHAEL SEXTON,

Respondent.

No. 2:18-cv-0712 WBS CKD P

ORDER

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 1, 2018, the court found that petitioner failed to exhaust state court remedies as to claim 1. That being the case, the court recommended that the petition be dismissed, and that petitioner be granted leave to file an amended petition asserting only claims 2 and 3.

On November 9, 2018, petitioner filed a document titled “Petitioner Request To Leave To Amend Unexhausted Claim And Stay Petition.” There is no text provided in the filing beyond the title. However, in light of the guidance provided to petitioner in the court’s November 1, 2018 findings and recommendations,<sup>1</sup> the court construes the November 9th document as a

<sup>1</sup> Petitioner was informed:

Pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), petitioner could also move to stay any amended petition, which includes only

1 motion for leave to file an amended habeas petition in which petitioner asserts only claims 2 and  
2 3, and a motion for a stay pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003).

3 In light of the foregoing, IT IS HEREBY ORDERED that:

4 1. The court's November 1, 2018 findings and recommendations are vacated.

5 2. Petitioner's request for leave to amend (ECF No. 21) is granted.

6 3. Petitioner's petition for a writ of habeas corpus is dismissed.

7 4. Respondent's motion to dismiss (ECF No. 16) is denied as moot.

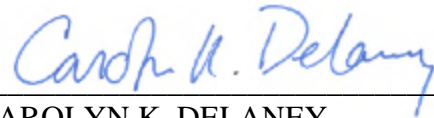
8 5. Petitioner is granted 30 days within which to file a petition for writ of habeas corpus  
9 which includes only the claims identified as claims 2 and 3 in his original petition. When the  
10 amended petition is filed, the court will address petitioner's request for a stay.

11 6. Petitioner's failure to file an amended petition which complies with this order within  
12 30 days will result in a recommendation that this action be dismissed.

13 7. Respondent need take no further action until receiving further direction from the court.

14 8. The Clerk of the Court is directed to send petitioner the court's form-application for a  
15 writ of habeas corpus pursuant to 28 U.S.C. § 2254.

16 Dated: December 5, 2018



17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE

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those claims where state court remedies are exhausted, while he  
seeks to exhaust state court remedies with respect to other claims.