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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

10 LAFONZO R. TURNER,

No. 2:18-cv-1071 WBS AC P

Petitioner,

v.

ORDER

13 WARDEN ASCUNCION,

Respondent.

Petitioner is a state prisoner proceeding pro se and in forma pauperis with this habeas action filed pursuant to 28 U.S.C. § 2254. This action has been stayed since October 25, 2018, pursuant to Mena v. Long, 813 F.3d 907 (9th Cir. 2016), and Rhines v. Weber, 544 U.S. 269 (2005), for the purpose of exhaustion of state court remedies. See ECF Nos. 8, 9. In response to this court's order filed August 27, 2019, ECF No. 10, petitioner filed a statement, ECF No. 11, informing the court that he had completed exhausting his claims in the state courts and submitted a new federal habeas petition that was filed in a new case, Turner v. Eldridge, Case No. 2:19-cv-01577 KJM GGH P.

Review of the docket in <u>Turner v. Eldridge</u>, Case No. 2:19-cv-01577 KJM GGH P,¹ indicates that the magistrate judge filed findings and recommendations therein on September 11,

¹ A court may take judicial notice of court records. <u>See MGIC Indem. Co. v. Weisman</u>, 803 F.2d 500, 505 (9th Cir. 1986); <u>United States v. Wilson</u>, 631 F.2d 118, 119 (9th Cir. 1980); <u>see also Fed. R. Evid. 201</u> (court may take judicial notice of facts that are capable of accurate determination by sources whose accuracy cannot reasonably be questioned).

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2019, recommending the dismissal of that case without prejudice because duplicative of the instant case. See id., ECF No. 4. This assessment is consistent with petitioner's express intent that his recently filed petition be construed as an amended petition in the instant case.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The Clerk of Court shall file in the instant case a copy of the petition filed in <u>Turner v. Eldridge</u>, Case No. 2:19-cv-01577 KJM GGH P (ECF No. 1), and designate it in this case as a "First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254."
- 2. Within thirty (30) days after service of this order, petitioner shall file a motion to lift the stay in this action and to proceed on the First Amended Petition; the motion shall identify the claims that were recently exhausted in the state courts and any claims that were previously exhausted, and shall explain how all of petitioner's claims are now ripe for decision before this court.
- 3. Failure of petitioner to timely file a motion to lift the stay in this action and to proceed on the First Amendment Petition will result in a recommendation that this action be dismissed without prejudice.

IT IS SO ORDERED.

DATED: September 18, 2019

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE

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