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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN SCHOPPE-RICO,	)	No. C 07-5416 JSW (PR)
	)	
Petitioner,	)	
	)	<b>ORDER DENYING MOTIONS TO</b>
vs.	)	<b>AMEND AND GRANTING</b>
	)	<b>EXTENSION OF TIME</b>
ROBERT A. HOREL, Warden,	)	
	)	
Respondent.	)	(Docket Nos. 25, 26, 28, 29, 30)
	)	
_____	)	

Petitioner, a prisoner of the State of California, filed a habeas corpus petition under 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction that raised thirteen claims for relief. After reviewing the petition, the Court dismissed two claims, dismissed five other claims with leave to amend, and found the remaining six claims to be cognizable. Petitioner then filed an amended petition. After reviewing Petitioner’s first amended petition, this Court ordered Respondent to show cause as to why eleven claims in the amended petition should not be granted and dismissed two claims that were found not cognizable on federal habeas review.


Petitioner later filed a second amended petition and a request for a stay to “exhaust” previously dismissed claims four and eight in state court, claims which the Court had dismissed for failure to state a claim for federal habeas relief, as well as to “further exhaust” other claims. The motion to exhaust was denied as unnecessary because Petitioner’s intended unexhausted additional claims did not present a claim for relief and Petitioner did not establish a need to return to the state courts for his intended purpose of

1 “further”exhausting certain claims to add omitted facts and certain arguments, which he  
2 identified as “cleaning up” the petitions.

3 Since the Court’s order September 21, 2009 order denying the motion to amend,  
4 Petitioner has filed two additional motion seeking leave to file a second or successive  
5 habeas petition (docket no. 26) and a motion seeking to amend the petition (docket no. 29).  
6 Petitioner has not attached his proposed amended petition to either of these motions.  
7 Although the motions are largely incomprehensible, it appears that Petitioner is making  
8 further arguments in support of his earlier motion to amend the first amended petition, the  
9 operative pleading in this case. However, the Court finds that further exhaustion of the  
10 claims raised, and the resulting delay in resolution of this case, is not appropriate, where  
11 Petitioner has not established the need to return to the state courts. Therefore, Petitioner’s  
12 motions to amend the first amended petition are DENIED (docket nos. 26, 29) for the  
13 reasons set forth in this Court’s earlier order denying Petitioner’s motion to amend (docket  
14 no. 24). Petitioner’s motions seeking an extension of time to file a traverse are  
15 GRANTED (docket nos. 25, 27) and Petitioner’s traverse is deemed timely filed.  
16 Petitioner’s motion seeking leave to file an oversize brief is GRANTED (docket no. 30).  
17 The instant matter is now submitted for a determination on the merits.

18 IT IS SO ORDERED.

19 DATED: May 3, 2010

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22 JEFFREY S. WHITE  
23 United States District Judge  
24  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 JOHN M. SCHOPPE-RICO,  
6 Plaintiff,  
7

Case Number: CV07-05416 JSW

**CERTIFICATE OF SERVICE**

8 v.


9 ROBERT A. HOREL et al,  
10 Defendant.  
\_\_\_\_\_ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on May 3, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
16 receptacle located in the Clerk's office.

17 John M. Schoppe-Rico V-11328  
18 Pelican Bay State Prison  
19 P.O. Box 7500  
20 Crescent City, CA 95532

Dated: May 3, 2010

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk