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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEENAN G. WILKINS,
Plaintiff,
v.
JEFF MACOMBER,
Defendant.

Case No. [16-cv-00221-SI](#)

**ORDER RE: MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 132

On February 10, 2021, the Court granted Petitioner’s motion for leave to file a second amended petition and granted in part and denied in part Petitioner’s motion for reconsideration. Order Re: Second Mtn. for Reconsideration (Dkt. No. 130). As a result, the Court gave Petitioner three options for how to proceed:

- (1) to dismiss the unexhausted claims and go forward in this action with only Claims 8, 18, 21-23 and partially on Claims 12 and 14,
- (2) dismiss this action and return to state court to exhaust all of his claims before returning to federal court to present all of his claims in a new petition, or
- (3) move for a stay of these proceedings while he exhausts his state court remedies for the unexhausted claims. *Id.* at 16:9-14.

Petitioner has elected choice (3). In doing so, however, and acknowledging the particularly convoluted record in this matter, Petitioner points out the Court improperly found Claims 2 and Claims 7 were not exhausted. Mtn. for Leave to File Mtn. for Reconsideration (Dkt. No. 132). The Court previously found Claim 2 was not exhausted because Petitioner had not raised this claim in the California Court of Appeal. Order Re: Second Mtn. for Reconsideration (Dkt. No. 130 at 8:23-

1 9:4¹). Petitioner has drawn the Court’s attention to Court of Appeals decision No. A131680 and the
2 petition for review filed in California Supreme Court No. S192859. Ground 1 of No. A131680 (Dkt.
3 No. 126-1 at 4); Ground 1 of No. S192859 (Dkt. No. 117-5 at 4). Petitioner raised his speedy trial
4 rights claim to the California Court of Appeals and this claim was received and considered by the
5 California Supreme Court. Mtn. for Leave to File Mtn. for Reconsideration (Dkt. No. 132 at 2:10-
6 3:9); Proof Re: A131680 presented to Cal. Ct. of App. (Dkt. No. 117-5 at 30); Proof Re: Cal. Sup.
7 Ct. consideration of A131680 in petition for review No. S192859 (Dkt. No. 117-26). Thus, Claim
8 2 has been exhausted.

9 Petitioner also noted the Court found the due process portion of Claim 22 exhausted on
10 Petitioner’s previous motion for reconsideration which has bearing on Claim 7. Order Re: Mtn for
11 Reconsideration (Dkt. No. 79 at 21:21-22:5). Because Claim 22 and Claim 7 involve the same
12 complex facts, Petitioner moved the due process portion of Claim 22 to Claim 7 in Petitioner’s
13 second amended petition. Second Amended Petition (Dkt. No. 115 at 11:15-12:2); MPA Re: Second
14 Amended Petition (Dkt. No. 115-1 at 7:21-24). Therefore, Claim 7 has been partially exhausted.

15 Because the Court agrees Claim 2 has been exhausted and Claim 7 has been partially
16 exhausted, Petitioner will now proceed on Claims 2, 8, 18, 21-23, and partially on Claims 7, 12, and
17 14.

18 Respondent must file a response to the second amended petition by May 7, 2021. Further,
19 both parties must file a stipulation with a briefing schedule by April 23, 2021.

20
21 **IT IS SO ORDERED.**

22 Dated: April 14, 2021



23
24 SUSAN ILLSTON
United States District Judge

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28 ¹ For ease of reference, all page citations refer to the ECT branded number in the upper
right corner of the page.