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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATHANIEL WALLACE,

Petitioner,

v.

LARRY SMALL, Warden,

Respondent.

Civil No. 08cv1146 LAB (POR)

ORDER DENYING PETITIONER'S

(1) REQUEST FOR RULING

**(2) MOTION TO ENFORCE DIRECT
CONTEMPT,**

**(3) PETITION FOR WRIT OF
MANDATE, AND**

**(4) MOTION FOR DEFAULT
JUDGMENT**

[Dkt. No. 17, 24, 26, & 28.]

Petitioner, a state prisoner proceeding *pro se*, submitted his First Amended Petition for Writ of Habeas Corpus on August 5, 2008 pursuant to 28 U.S.C. § 2254. (Dkt. No. 3.)

On November 26, 2008 (dated *nunc pro tunc* on November 24, 2008), Petitioner filed a request for ruling. (Dkt. No. 17.) On January 24, 2009 (dated *nunc pro tunc* on December 30, 2008), Petitioner filed a motion to enforce direct contempt. (Dkt. No. 24.) On January 7, 2009 (dated *nunc pro tunc* on December 30, 2008), Petitioner filed a petition for writ of mandate. (Dkt. No. 26.) On January 22, 2009 (dated *nunc pro tunc* on January 20, 2009), Petitioner filed a motion for default judgment. (Dkt. No. 28.)

Petitioner's four motions refer to Respondent's purported failure to comply with this

1 Court's August 25, 2008 Order.¹ In that Order, Petitioner was informed that his Petition
2 failed to allege exhaustion as to his first claim and delineated three options available to him:
3 (1) demonstrate exhaustion; (2) voluntarily dismiss the Petition; and (3) formally abandon his
4 unexhausted claims. (Dkt. No. 6 at 2-3.) Petitioner's second option provided for the
5 voluntary dismissal of the Petition and a return to state court to exhaust his unexhausted
6 claim. (Id. at 2.) If Petitioner pursued that option, he was required to file a pleading by
7 September 10, 2008. Id. Per the Order, Respondent had the option to file a reply by
8 September 25, 2008.² Id.

9 Petitioner alleges Respondent failed to file a reply by September 25, 2008. Petitioner,
10 however, did not choose the second option and, instead, pursued the first option. That is,
11 Petitioner demonstrated exhaustion to the satisfaction of the Court. (See Dkt. Nos. 7& 19.)
12 Thus, Respondent was under no obligation to file a reply.

13 Based thereon, the Court hereby **DENIES** Petitioner's motions as moot.

14 DATED: February 24, 2009

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17 LOUISA S PORTER
18 United States Magistrate Judge

19 cc The Honorable Larry A. Burns
20 All parties

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26 _____
27 ¹ Petitioner's petition for writ of mandate misstates the date of the this Court's August 25, 2008
28 Order as August 29, 2008. (Dkt. No. 26 at 2.)

²Petitioner's petition for writ of mandate also misstates the date of Respondent's reply as
September 29, 2008. (Dkt. No. 26 at 2.)