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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID TIFFANY,

Petitioner,

v.

ROBERT LEGRAND, *et al.*,

Respondents.

Case No. 3:13-cv-00682-MMD-VPC

ORDER

Petitioner, a Nevada state prisoner, initiated this habeas action on December 12, 2013, with the filing of a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 2.) On February 17, 2015, the Court granted the respondents' motion to dismiss after finding several of the petitioner's claims to be unexhausted. (ECF No. 29.) Petitioner was directed to notify the Court how he wished to proceed on his mixed petition. Petitioner filed a motion for reconsideration, which the Court denied on March 24, 2016. (ECF Nos. 32, 41.) The Court again directed the petitioner to notify the Court how he wished to proceed. In response, petitioner filed a motion to stay and abey (ECF No. 42.) Several months later, petitioner filed another motion for reconsideration and, without leave of court, an amended petition. (ECF Nos. 48, 49.) On August 22, 2017, the Court denied petitioner's motions to stay and for reconsideration and dismissed without prejudice the claims identified as unexhausted in the Court's February 17, 2015, order. (ECF No. 53.) The Court directed respondents to file an answer to the remaining claims of the petition by September 21, 2017. (*Id.*) That time period was later extended to November 9, 2017.

1 On November 9, 2017, respondents filed a motion for an extension of time to file
2 an answer, seeking an extension until November 13, 2017. (ECF No. 59.) On November
3 13, 2017, respondents filed a motion for clarification, asking the Court to clarify to which
4 of the petitions — the original or the amended — respondents were to answer. (ECF No.
5 61.) Respondents also filed a motion for enlargement of time, seeking to extend the time
6 for filing an answer until after the Court has decided the motion for clarification. (ECF No.
7 60.)

8 It is ordered that the amended petition (ECF No. 49), filed without leave of court
9 and therefore a fugitive document, is hereby stricken. Petitioner may file a motion for
10 leave to amend his petition within thirty (30) days of the date of this order. In any such
11 motion, petitioner should address the following factors considered in deciding a motion
12 for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4)
13 futility of amendment; and (5) whether petitioner has previously amended his complaint.
14 In particular, petitioner should demonstrate that amendment is not futile as “[f]utility alone
15 can justify the denial of a motion for leave to amend.” *Nunes v. Ashcroft*, 375 F.3d 805,
16 808 (9th Cir. 2004). Amendment would be futile if new claims in an amended petition are
17 untimely and do not relate back to — that is, share a “common core of operative facts”
18 with — petitioner’s claims in his original petition. *See Mayle v. Felix*, 545 U.S. 644, 656-
19 64 (2005).

20 It is further ordered that the Clerk of Court send petitioner a copy of his amended
21 petition (ECF No. 49).

22 It is further ordered that respondents’ motion for clarification (ECF No. 61) is denied
23 as moot.

24 It is further ordered that respondents’ motion for an extension of time to file the
25 answer up to and including November 13, 2017 (ECF No. 59), is granted *nunc pro tunc*
26 to November 9, 2017.

27 It is further ordered that respondents’ motion for enlargement of time (ECF No. 60)
28 is denied as moot. However, the deadline for respondents to answer the petition is hereby

1 stayed and will be reset after the Court has resolved any motion to amend or after the
2 time for filing such a motion has expired.

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4 DATED THIS 14th day of November 2017.



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6 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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