

1 to all the claims in the petition. *See Rose v. Lundy*, 455 U.S. 509, 515 (1982); 28
2 U.S.C. § 2254(b)(1). A petitioner exhausts all available state court remedies by
3 presenting his claims to the highest court of the state in which he was convicted.
4 *O’Sullivan v. Boerckel*, 526 U.S. 838, 842-43 (1999).

5 Here, while the petition shows that petitioner has filed numerous habeas
6 petitions in the Superior Court of Ventura County, it does not indicate that he has
7 sought any relief from the California Supreme Court. California court records
8 confirm that plaintiff has not sought relief from the California Supreme Court.²
9 Accordingly, none of petitioner’s claims is exhausted. Because petitioner’s claims
10 are unexhausted and no exception to the exhaustion requirement is present, his
11 claims must be dismissed.³ *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991)
12 (“[A] state prisoner’s federal habeas petition should be dismissed if the prisoner
13 has not exhausted available state remedies as to any of his federal claims.”
14 (citations omitted))

15 Moreover, the petition should be dismissed because petitioner’s claims,
16 even if they are construed extremely loosely, are patently without merit.⁴ Claims
17

18 ² The Court takes judicial notice of California’s court records, located on the
19 California Court of Appeal case information website,
20 <http://appellatecases.courtinfo.ca.gov/index.html>. *See Porter v. Ollison*, 620 F.3d
21 952, 954-55 (9th Cir. 2010) (citations omitted).

22 ³ While the Ninth Circuit has held that Courts may stay a petition that
23 consists entirely of unexhausted claims, *Mena v. Long*, 813 F.3d 907 (9th Cir.
24 2016), the Court declines to do so in this instance. As presented, petitioner’s
25 claims are patently without merit. Accordingly, the Court is satisfied that
26 petitioner has not met the threshold for showing that he is entitled to a stay. *See*
27 *Rhines v. Weber*, 544 U.S. 269, 277 (2005) (holding that a petitioner is not entitled
28 to a stay where claims are “plainly meritless”). Thus, it is appropriate to dismiss
petitioner’s claims without providing him an opportunity to stay the petition.

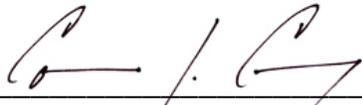
⁴ Courts may deny relief on the merits of unexhausted claims where “it is
(continued...)

1 one, three, and four of the petition are seemingly premised on petitioner's
2 allegation that the entity he defrauded was not a licensed insurance provider.
3 Construed loosely, these claims appear to assert that petitioner's conviction is
4 invalid because he could not have been guilty of defrauding an unlicensed insurer.
5 However, California law does not require prosecutors to prove that an insurer is
6 "licensed" in order to obtain a conviction for insurance fraud. *See* Cal. Penal
7 Code § 550 (West 2011). Accordingly, petitioner cannot obtain relief on claims
8 one, three, and four. Claim two is likewise meritless. At most, claim two asserts
9 that the prosecution in petitioner's case mistakenly or maliciously put before the
10 sentencing court evidence of an unrelated vehicle insurance claim. However, even
11 this strained interpretation of the claim does not show that petitioner is entitled to
12 relief. Indeed, the facts of claim two do not suggest the prosecution or the court
13 violated the Constitution, laws, or treaties of the United States. As a result, claim
14 two is without merit.

15 In sum, the petition should be dismissed because it does not contain a single
16 exhausted claim and the claims therein are plainly meritless. Thus, it is apparent
17 from the face of the petition that petitioner is not entitled to relief. Accordingly,
18 pursuant to Rule 4 of the Rules Governing § 2254 Cases in the U.S. District
19 Courts, the petition is DISMISSED without prejudice.

20 LET JUDGMENT BE ENTERED ACCORDINGLY.

21 Dated: February 24, 2017

22 
23 _____
24 CORMAC J. CARNEY
25 United States District Judge

26 Presented by:
27 /S/ FREDERICK F. MUMM
28 FREDERICK F. MUMM
United States Magistrate Judge

27 (...continued)
28 perfectly clear that the applicant does not raise even a colorable federal claim.”
Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005).