

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	EDCV 16-2612-JLS (GJS)	Date	December 1, 2017
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Title	Joshua Martinez v. Warren L. Montgomery, Warden
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Present:	Hon. Gail J. Standish, United States Magistrate Judge
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E. Carson

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner:

Attorneys Present for Respondent:

None present

None present

**Proceedings:** (IN CHAMBERS) Order To Show Cause

On December 22, 2016, Petitioner filed a Section 2254 habeas petition that, on its face, showed that it was “mixed,” *i.e.*, contained a mix of exhausted and unexhausted claims. In fact, Petitioner admitted that Grounds Four through Six were unexhausted. Following further proceedings, the Court granted Petitioner’s request for a *Rhines* stay on February 2, 2017 [Dkt. 8, “February 2 Order”].

Pursuant to the February 2 Order, Petitioner was required to file Status Reports every 45 days, advising the Court of the status of his state habeas proceeding(s). Petitioner filed four Status Reports, with the last one filed on June 28, 2017 [Dkt. 13]. In that June 28 Status Report, Petitioner advised that the California Court of Appeal had denied his habeas petition on April 19, 2017, and that he would be filing a habeas petition in the California Supreme Court within two weeks.

Petitioner has not communicated with the Court since that June 28 filing and is in violation of the February 2 Order. The Court has reviewed the electronic dockets available for the California Supreme Court, and they do not show any habeas filing by Petitioner. It may be that Petitioner has abandoned his exhaustion efforts with respect to Grounds Four through Six. Indeed, it is unclear that he wishes to pursue this action.

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The February 2 Order explicitly cautioned Petitioner that “the failure to comply with these requirements may result in the Court ordering the stay to be vacated nunc pro tunc and the possible dismissal of Grounds Four through Six.” Under the circumstances, it appears that vacating the *Rhines* stay may be warranted.

Accordingly, Petitioner is ORDERED TO SHOW CAUSE why the *Rhines* stay imposed in this action should not be vacated and dismissal of the Petition – on the ground that it is mixed – should not be recommended, absent a dismissal of Grounds Four through Six. **By no later than December 31, 2017**, Petitioner shall file a Response to this Order To Show Cause explaining his both failure to file a habeas petition in the California Supreme Court and his failure to comply with the February 2, Order. If Petitioner chooses to voluntarily dismiss unexhausted Grounds Four through Six, he shall so advise the Court.

**IT IS SO ORDERED.**