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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES FLEMING,

1:09-cv-01765-SMS (HC)

Petitioner,

ORDER VACATING ORDER TO SHOW CAUSE

v.

[Doc. 9]

MATTHEW CATE,

Respondent.

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is represented by Allen R. Bloom, Esq.

On October 19, 2009, the Court granted Petitioner’s motion to stay and hold the petition in abeyance pending exhaustion in the state courts. (Court Doc. 7.) The Court directed Petitioner to file a status report every ninety days. (Id.) Petitioner timely filed a status report on January 25, 2010; however, Petitioner has failed to comply with the Court’s order by filing a subsequent status report within ninety days thereafter. On May 6, 2010, the Court issued an order to show cause why the stay should not be lifted and sanctions imposed for failure to comply with a court order. Respondent filed a response and status report on May 10, 2010. (Court Docs. 10, 11.)

Respondent’s counsel submits that on April 25, 2010-the day before the status report was to be filed, he was working on the next petition to be filed in the California Court of Appeal. Counsel discovered that further research was necessary and decided to wait a day to file the

1 status report to reflect the most recent filing. However, counsel and his office staff became ill,
2 and the filing of the state court petition was delayed. Counsel acknowledges the status report
3 should have been filed despite the delay in the state filing, and sincerely apologizes for the
4 mistake.

5 Based on counsel's representation in his response, the Court finds the delay was negligent
6 and not intentional, and the Order to Show Cause is HEREBY VACATED.

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9 IT IS SO ORDERED.

10 **Dated:** May 17, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE