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UNITED STATES DISTRICT COURT7
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EASTERN DISTRICT OF CALIFORNIA10 KELLY ALICE KESSLER,) 1:10-cv-0322-OWW-SMS-HC
11 Petitioner,)
12) ORDER DIRECTING RESPONDENT TO
13 v.) MAKE AN APPEARANCE AND TO FILE
14) OPPOSITION OR A STATEMENT OF NON-
15) OPPOSITION TO PETITIONER'S MOTION
16) FOR STAY AND ABEYANCE (Doc. 15)
17 TINA HORNBEAK, Warden, et al.,)
18 Respondents.) ORDER DIRECTING THE CLERK TO
19) SERVE THE PETITION AND MOTION ON
20) RESPONDENT
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2425 Petitioner is a state prisoner proceeding with the
26 assistance of counsel with a petition for writ of habeas corpus
27 pursuant to 28 U.S.C. § 2254. The matter has been referred to
28 the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local
Rules 302 and 304. Pending before the Court is Petitioner's
motion to stay the action, filed on March 12, 2010.I. BackgroundPetitioner alleges claims concerning her conviction in the
Tuolumne County Superior Court of possession of a firearm and
related offenses. Petitioner admits that with respect to some of

1 the claims, Petitioner has failed to exhaust state remedies.
2 Petitioner has filed a protective petition because of uncertainty
3 regarding a future determination of the timeliness of the
4 Petitioner's claims.

5 The Court has not completed its initial screening of the
6 petition, and Respondent has not been directed to order a
7 response to the petition.¹ The Court seeks the input of
8 Respondent with respect to Petitioner's motion for a stay.

9 Therefore, the Court will direct service upon Respondent of
10 the petition and the motion to stay, and the Court will further
11 direct Respondent to make an appearance for the limited purpose
12 of permitting the Court to consider and determine the motion to
13 stay.

14 II. Disposition

15 Accordingly, it is ORDERED that:

16 1) Respondent is DIRECTED to file no later than thirty days
17 after the date of service of this order opposition to
18 Petitioner's motion to stay the action, or a statement of non-
19 opposition to the motion; and

20 2) The Clerk is DIRECTED to serve upon Respondent a copy of
21 the petition (doc. 1) and Petitioner's motion for a stay (doc.
22 15); and

23 3) Respondent is DIRECTED to make a limited appearance in
24 this proceeding for the purpose of litigating the motion for a
25 stay presently before the Court; and

26 4) Petitioner may file a reply to any opposition filed by

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28 ¹ Respondent did file a notice that she declined to proceed before a Magistrate Judge. (Doc. 16, filed
March 12, 2010.)

1 Respondent no later than fourteen days after the date of service
2 of any opposition.

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4 IT IS SO ORDERED.

5 Dated: July 16, 2010

6 /s/ Sandra M. Snyder
7 UNITED STATES MAGISTRATE JUDGE