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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN W. KRUEGER,

1:11-CV-00097 SMS HC

Petitioner,

ORDER GRANTING PETITIONER'S
MOTION FOR STAY AND ABEYANCE
[Doc. #13]

v.

MATTHEW CATE,

ORDER DENYING RESPONDENT'S
MOTION TO DISMISS
[Doc. #9]

Respondent.

THIRTY DAY DEADLINE

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 20, 2011, Petitioner filed the instant petition regarding his 2007 conviction in Kern County Superior Court for lewd and lascivious conduct with a child under the age of fourteen. Respondent filed a motion to dismiss the petition because the majority of the claims raised were unexhausted in that Petitioner had not presented them first to the California Supreme Court. Petitioner filed an opposition to the motion along with a motion for stay and abeyance. Respondent filed a statement of non-opposition to Petitioner's motion for stay.

DISCUSSION

A district court has discretion to stay a petition which it may validly consider on the merits. Rhines v. Weber, 544 U.S. 269, 277 (2005); Calderon v. United States Dist. Court (Taylor), 134 F.3d

1 of this Order advising the Court of the filing of his state court petition and the date the petition was
2 filed;

3 5. Petitioner is DIRECTED to file a new status report every ninety (90) days thereafter; and

4 6. Should Petitioner be denied relief by the California Supreme Court, he will be
5 ALLOWED thirty (30) days time following the final order of the California Supreme Court in which
6 to file a motion to lift the stay and proceed on the initial petition.

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9 IT IS SO ORDERED.

10 **Dated: June 2, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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