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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTURO HUERTA,
Petitioner,
v.
RON DAVIS,
Respondent.

Case No. 1:15-cv-01827-SAB-HC
ORDER SETTING BRIEFING SCHEDULE

Petitioner is a state prisoner proceeding pro se in a habeas corpus action pursuant to 28 U.S.C. § 2254. In the answer, Respondent asserts that two claims in the petition are unexhausted but should be denied on the merits. (ECF No. 10 at 20, 25).¹ In the traverse, Petitioner states that he filed a state habeas petition in the superior court on February 16, 2016 in order to exhaust the two unexhausted claims. Additionally, Petitioner requests that the Court hold the petition in abeyance pending resolution of the unexhausted claims in state court. (ECF No. 12 at 5). “Stay and abeyance” is available only in “limited circumstances,” and only when: (1) there is “good cause” for the failure to exhaust; (2) the unexhausted claims are not “plainly meritless”; and (3) the petitioner did not intentionally engage in dilatory litigation tactics. Rhines v. Weber, 544 U.S. 269, 277–78 (2005).

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 Accordingly, the Court HEREBY ORDERS that:

- 2 1. Within THIRTY (30) days of the date of service of this order, Petitioner shall file
3 a brief addressing exhaustion and whether he is entitled to “stay and abeyance”
4 under Rhines;
- 5 2. Respondent shall file a response within TWENTY-ONE (21) days of the date of
6 service of Petitioner’s brief; and
- 7 3. Petitioner may file a reply within SEVEN (7) days of the date of service of
8 Respondent’s reply.

9
10 IT IS SO ORDERED.

11 Dated: April 21, 2017



UNITED STATES MAGISTRATE JUDGE