

1 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
2 answer to the petition has been filed.

3 II. Exhaustion

4 A petitioner who is in state custody and wishes to collaterally challenge his conviction by a
5 petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The
6 exhaustion doctrine is based on comity to the state court and gives the state court the initial
7 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S.
8 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion
9 requirement by providing the highest state court with a full and fair opportunity to consider each claim
10 before presenting it to the federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995).

11 Petitioner presents nine claims in his instant petition and states that they have all not yet been
12 exhausted. He further states that a habeas petition is currently pending in the California Supreme
13 Court. Therefore, the petition is a mixed petition containing unexhausted claims. Petitioner has
14 requested a stay of the mixed petition pending exhaustion.

15 III. Motion for Stay and Abeyance

16 A district court has discretion to stay a mixed petition and allow the petitioner to return to state
17 court to exhaust his state remedies. Rhines v. Weber, 544 U.S. 269, 277 (2005); Calderon v. United
18 States Dist. Court (Taylor), 134 F.3d 981, 987-88 (9th Cir.1998); Greenawalt v. Stewart, 105 F.3d
19 1268, 1274 (9th Cir.1997). However, the Supreme Court has held that this discretion is circumscribed
20 by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Rhines, 544 U.S. at 277. In
21 light of AEDPA’s objectives, “stay and abeyance [is] available only in limited circumstances” and “is
22 only appropriate when the district court determines there was good cause for the petitioner’s failure to
23 exhaust his claims first in state court.” Id. at 277.

24 In this case, the Court finds good cause to grant the motion for stay. Petitioner states that he
25 was investigating “new issues of merit” and states that appellate counsel failed to raise certain
26 constitutional claims. Petitioner states he has already commenced exhaustion of the issues in state
27 court by filing a habeas petition in the California Supreme Court. It appears Petitioner is acting
28 diligently. Accordingly, the Court finds that Petitioner has shown good cause for a stay of the

