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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY JAMES GEREN,

Petitioner,

No. CIV S-05-1344 JKS GGH P

vs.

TOM L. CAREY, Warden,

ORDER

Respondent.

_____ /

Petitioner is proceeding in forma pauperis and with appointed counsel on an application for a writ of habeas corpus, pursuant to 28 U.S.C. 2254. On July 30, 2007, the undersigned recommended that this action be administratively stayed so that petitioner could exhaust an additional claim in state court.

On July 16, 2009, and September 17, 2009, hearings were held before the undersigned regarding motions to lift the stay and a request for an evidentiary hearing as petitioner contended that efforts to exhaust the additional claim in state court had stalled and therefore exhaustion should be excused. Marylou Hillberg appeared on behalf of petitioner. Daniel Bernstein appeared on behalf of respondent. Deputy District Attorney Kelly Maloy for Butte County also appeared on September 17, 2009, on behalf of respondent.

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1 By Order on October 9, 2009, the undersigned denied the motion to reopen the
2 case and denied the request for an evidentiary hearing. However, the undersigned indicated that
3 if petitioner prepared a funding request, the undersigned would authorize funds to finish the state
4 court evidentiary hearing. The undersigned also made the same representation during the
5 September 17, 2009, hearing.

6 Three months have passed since the Order was issued and petitioner has not
7 presented any funding request to the court.

8 Accordingly, IT IS HEREBY ORDERED that

9 1. Within fourteen days of service of this order, petitioner shall present a funding
10 request as outlined in the October 9, 2009, order, or state that such is not necessary to continue
11 with the state court hearing. If the above filing is not made, the undersigned will recommend that
12 the claim be dismissed for lack of prosecution.

13 DATED: January 11, 2010

14 /s/ Gregory G. Hollows

15 _____
16 GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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