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

ANTHONY JEROME HAIRSTON,

Petitioner,

No. 2: 10-cv-3056 JAM KJN P

vs.

K. HARRINGTON,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

The petition raises five claims. Petitioner concedes that claim five is not yet exhausted and has separately filed a motion requesting that this action be stayed pending exhaustion of claim five.

A district court may grant a stay and abeyance for a mixed petition “only in limited circumstances.” Rhines v. Weber, 544 U.S. 269, 276-77 (2005). Specifically, a

1 stay-and-abeyance order is appropriate only when: (1) good cause exists for the petitioner's
2 failure to exhaust; (2) the petitioner's unexhausted claims are not "plainly meritless;" and (3)
3 there is no indication that the petitioner engaged in "abusive litigation tactics or intentional
4 delay." Id. at 277-78.

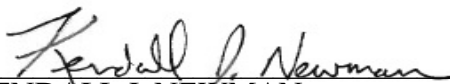
5 Petitioner's motion to stay does not address the "good cause" factor discussed
6 above. In other words, petitioner does not address why he failed to exhaust claim five before
7 filing the instant petition. For this reason, petitioner's motion to stay is denied without prejudice.
8 Petitioner is granted thirty days to file a renewed motion to stay addressing the "good cause"
9 factor.

10 In accordance with the above, IT IS HEREBY ORDERED that:

11 1. Petitioner's application to proceed in forma pauperis (Dkt. No. 2) is granted;

12 2. Petitioner's motion to stay (Dkt. No. 3) is denied without prejudice; petitioner
13 is granted thirty days from the date of this order to file a renewed motion to stay.

14 DATED: December 30, 2010

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17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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