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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL NAGY,

 Petitioner,

 v.

D. DAVEY, et al.,

 Respondents.

No. 2:11-cv-2948 WBS-DAD (HC)

ORDER

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 11, 2012, the court issued an Order and Findings and Recommendations construing petitioner’s April 16, 2012 motion for stay and abeyance to include a request to delete his unexhausted claims, deeming petitioner’s original petition, filed November 7, 2011, amended by the deletion of Grounds A, E, F, G, and H, all of which were admittedly unexhausted, and recommending that this action be stayed pending petitioner’s exhaustion of his unexhausted claims by presenting them to the highest state court for review. (ECF No. 23 at 3.) The assigned District Judge adopted those Findings and Recommendations on December 5, 2012, and ordered this action be stayed pending exhaustion of petitioner’s claims in state court. (ECF No. 25 at 2.)

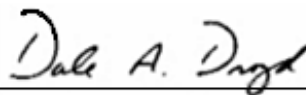
Presently before the court is respondents’ motion to lift the current stay. (ECF No. 26.) Therein, respondents represent that petitioner filed a state habeas petition in the San Joaquin

1 County Superior Court on June 22, 2012, in which he presented an ineffective assistance of
2 counsel claim. (Id. at 1-2.) Respondent points out, however, that petitioner filed that state
3 exhaustion petition after filing his motion seeking a stay in this court but prior to this court
4 granting the stay. (Id.) Respondents also report that the San Joaquin County Superior Court
5 denied petitioner's exhaustion petition on July 24, 2012, nearly five months prior to this court's
6 granting of petitioner's motion for a stay in this action.¹ (Id. at 2.) Respondents assert that
7 petitioner has filed no other habeas petitions in state court. (Id.) In short, respondents represents
8 that petitioner has apparently filed no state habeas petitions over the sixteen month period since
9 this court granted his request to stay this action. (Id.) Respondents contends that petitioner is
10 abusing the current stay, requests that it be lifted and argues that petitioner should now be
11 required to proceed in this action only on his exhausted claims. (Id.)

12 Respondents' motion appears to be well-taken. Nonetheless, the court will provide
13 petitioner a further opportunity to respond. Within thirty days of the service of this order,
14 petitioner shall show cause in writing why the current stay should not be lifted with him being
15 required to proceed in this habeas action only on his already exhausted claims. In any response to
16 this order to show cause petitioner may inform the court and respondents of any efforts he claims
17 he has undertaken to exhaust his unexhausted claims by presenting them to the California
18 Supreme Court for review. Petitioner is forewarned that any failure to respond to this order to
19 show cause will result in an order granting respondents' motion to lift the previously entered stay
20 and requiring that this federal habeas action proceed only on his exhausted claims.

21 IT IS SO ORDERED.

22 Dated: June 5, 2014

23 

24 _____
DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE

26 Nagy2948.liftstay.docx

27 ¹ Respondents have attached to their motion as exhibits copies of plaintiff's habeas petition filed
28 with the San Joaquin County Superior Court as well as that court's order denying that petition.
(See ECF No. 26 at 3-9.)