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

NOU VANG,

Petitioner,

No. 2: 12-cv-0159 DAD P

vs.

STATE OF CALIFORNIA, et al.,

Respondents.

ORDER

_____ /

Petitioner is a state prisoner proceeding *pro se* with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 10, 2012, the court noted that petitioner’s sole claim for federal habeas relief is based on his contention that he did not receive a speedy trial. (See Dkt. No. 12 at p. 1-2.) Petitioner also filed a brief motion for stay and abeyance of this action that was denied by this court without prejudice. (See id. at p. 5.) In that order the court noted that it was not clear whether petitioner’s sole claim for habeas relief was exhausted or unexhausted. (See id. at p. 3.) Furthermore, it was not clear whether petitioner wished to pursue additional claims that he that he had not included in his habeas petition pending before this court. (See id. at p. 4.) Therefore, the court granted petitioner thirty days to file a renewed motion for stay and abeyance so as to clarify whether he wished to proceed with a stay and abeyance under the procedure outlined in Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), or under

1 the procedure outlined in Rhines v. Weber, 544 U.S. 269 (2005). The court also noted that
2 petitioner would need to file an amended petition containing any exhausted and unexhausted
3 claims if he requested a Rhines stay. Alternatively, the court noted that “if petitioner has not
4 exhausted any of his claims in state court as required, he may move to voluntarily dismiss this
5 action without prejudice.” (Dkt. No. 12 at p. 5.)

6 Petitioner received an extension of time to comply with the court’s July 10, 2012
7 order until September 25, 2012. (See Dkt. No. 14.) To date, petitioner has not filed a renewed
8 motion for stay and abeyance nor has he filed a notice of voluntary dismissal.

9 Accordingly, IT IS HEREBY ORDERED that any renewed motion for stay and
10 abeyance shall be due twenty-one (21) days from the date of this order. Should petitioner elect
11 not to file a renewed motion for stay and abeyance by that date, the court will presume that
12 petitioner no longer seeks a stay and the original habeas petition pending before this court will
13 then be screened.

14 DATED: November 9, 2012.

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17 _____
18 DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

19 DAD:dpw
20 vang0159.osc.stay