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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW A. MOLINA,
Petitioner,
v.
HEIDI M. LACKNER,
Respondent.

No. 2:13-cv-1926 TLN GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, is proceeding with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner’s habeas was previously dismissed as completely unexhausted on January 9, 2014, after consideration of petitioner’s motion to stay for purposes of exhaustion, judgment was entered. (ECF Nos. 7, 14, 15.) Petitioner appealed, and on October 3, 2016,¹ the Court of Appeals for the Ninth Circuit vacated and remanded the case in light of its recently issued decision holding that “a district court has the discretion to stay and hold in abeyance fully unexhausted petitions under the circumstances set forth in [*Rhines v. Weber*, 544 U.S. 269 (2005)].” *Mena v. Long*, 813 F.3d 907 (9th Cir. 2016).

In accordance with the Ninth Circuit’s remand order, this action will be re-opened and the undersigned will give petitioner the opportunity to file a renewed motion for stay and abeyance

¹ The mandate was issued on October 26, 2016. (ECF No. 22.)

1 pursuant to Rhines v. Weber, taking Mena's recent holding into consideration. In Rhines v.
2 Weber, 544 U.S. 269, 125 S.Ct. 1528 (2005) the United States Supreme Court found that a stay
3 and abeyance of a mixed federal petition should be available only in the limited circumstance that
4 good cause is shown for a failure to have first exhausted the claims in state court, that the claim or
5 claims at issue potentially have merit, and that there has been no indication that petitioner has
6 been intentionally dilatory in pursuing the litigation. Rhines, supra, at 277-78, 125 S.Ct at 1535.

7 Petitioner is advised that his renewed motion shall address the Rhines factors. Petitioner
8 is advised that he must show good cause for the belated exhaustion of presently unexhausted
9 claims he now desires to pursue.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Pursuant to the order of remand issued by the Court of Appeals for the Ninth Circuit,
12 judgment is vacated and this action is reopened.
- 13 2. Petitioner shall file a renewed motion for stay and abeyance within **thirty** days of this
14 order. Failure to file the motion will result in a recommendation that this action be
15 dismissed.

16 Dated: December 23, 2016

17 /s/ Gregory G. Hollows
18 UNITED STATES MAGISTRATE JUDGE

19 GGH:076: moli1926.rem-Mena
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