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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM THOMAS SCHMITZ,
Petitioner,
v.
JOE A. LIZZARAGA, Warden,
Respondent.

No. 2:14-cv-0659 TLN AC P

ORDER

Petitioner, a state prisoner proceeding with retained counsel, filed an application for a writ of habeas corpus pursuant to 28 U.S. § 2254. A hearing on a motion to stay and abey proceedings on a mixed petition, pursuant to Rhines v. Weber, 544 U.S. 269 (1995), was scheduled for hearing on May 21, 2014. However, petitioner has notified this court that the California Supreme Court denied his petition on April 30, 2014, exhausting his claims. ECF No. 15. Petitioner has filed a first amended petition that appears to contain exhausted claims only. ECF No. 16. Respondent has now filed an unopposed motion to remove the hearing from the court’s calendar. ECF No. 17. The hearing will accordingly be vacated and the pending motions to stay will be denied as moot.

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner’s first amended habeas petition.

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Accordingly, IT IS ORDERED as follows:

1. Respondent's unopposed motion to vacate the May 21, 2014 hearing date from the court's calendar (ECF No. 17) is GRANTED; and
2. The motions to stay (ECF No. 2 and ECF No. 9) are DENIED as moot;
3. Respondent is directed to file a response to petitioner's first amended habeas petition within sixty days from the date of this order. See Rule 4, 28 U.S.C. foll. § 2254. An answer shall be accompanied by all transcripts and other documents relevant to the issues presented in the petition. See Rule 5, 28 U.S.C. foll. § 2254;
4. If the response to the first amended habeas petition is an answer, petitioner's reply, if any, shall be filed and served within thirty days after service of the answer;
5. If the response to the first amended habeas petition is a motion, it shall be noticed for hearing and briefed responsively pursuant to Local Rule 230.

DATED: May 16, 2014



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE