UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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| NEAL O'NEILL,<br>Petitioner,<br>v.<br>STATE OF CALIFORNIA,<br>Respondent. | No. 2:16-cv-0417 KJN P<br><br>ORDER |

Petitioner is a state prisoner, proceeding without counsel. On June 23, 2016, this action was dismissed without prejudice. On July 29, 2016, petitioner filed an appeal, which remains pending. On February 2, 2017, petitioner filed a motion to reopen the case. Petitioner asks the court to permit him to submit the missing page eight that would inform the court and respondent whether petitioner was pursuing one or two claims. However, the instant petition was not dismissed on the basis of the missing page; indeed, the missing page 8 was located and scanned in by the clerk. (ECF No. 13 at 2-4, n.2.) Moreover, the petition was dismissed because petitioner's direct appeal was pending in state court. Thus, petitioner's motion does not raise a substantial issue at this time. Fed. R. Civ. P. 62.1. Accordingly, IT IS HEREBY ORDERED that petitioner's motion is denied (ECF No. 23) without prejudice.

Dated: February 22, 2017

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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