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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAMON J. LYNCH, JR.,
Petitioner,
v.
SUZANNE M. PEERY,¹
Respondent.

No. 2:16-cv-0448 JAM AC P

ORDER

Petitioner is a state prisoner at the California Correctional Center (CCC) in Susanville, proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. By findings and recommendations filed March 25, 2016, this court recommended the dismissal of this action without prejudice because the petition contains only claims that have not been exhausted in the state courts. See ECF No. 4. However, in light of the recent decision by the Ninth Circuit Court of Appeal in Mena v. Long, 813 F.3d 907 (Feb. 17, 2016), petitioner is entitled to request a stay of his petition in this court while he exhausts his claims in the state courts. Additionally, petitioner has now consented to the jurisdiction of the undersigned United States Magistrate Judge for all purposes pursuant to 28 U.S.C. § 636(c) and Local Rule 305(a).

¹ Warden Suzanne M. Peery is substituted as respondent herein. A federal petition for writ of habeas corpus must name as respondent the state officer having custody of petitioner. See 28 U.S.C. § 2254; Rule 2(a), Rules Governing Section 2254 Cases in the U.S. District Courts; Smith v. Idaho, 392 F.3d 350, 354-55 (9th Cir. 2004); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).

1 See ECF No. 5. For these reasons, the court withdraws its prior recommendation and grants
2 petitioner leave to file a motion requesting a stay of this action under the circumstances identified
3 in Rhines v. Weber, 544 U.S. 269 (2005), as set forth below.

4 Accordingly, IT IS HEREBY ORDERED that:


5 1. This court’s recommendation that this action be dismissed without prejudice for failure
6 to exhaust state court remedies, ECF No. 4, is vacated; the remainder of the court’s order remains
7 valid.

8 2. Petitioner may, within thirty days after the filing date of this order, file a motion to stay
9 and hold in abeyance this action upon demonstration that “petitioner had good cause for his
10 failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication
11 that the petitioner engaged in intentionally dilatory litigation tactics.” Mena v. Long, 813 F.3d at
12 910 (quoting Rhines v. Weber, 544 U.S. at 278).

13 3. Petitioner’s failure to timely file such motion will result in the dismissal of this action
14 without prejudice.²

15 SO ORDERED.

16 DATED: April 12, 2016

17 
18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE

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25 _____
26 ² Petitioner is cautioned that the habeas corpus statute imposes a one-year statute of limitations
27 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period
28 will start to run on the date when the state court judgment became final by the conclusion of
direct review or the expiration of time for seeking direct review, although the statute of
limitations is tolled while a properly filed application for state post-conviction or other collateral
review is pending. See 28 U.S.C. § 2244(d).