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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOWARD FORBES,  
Petitioner,  
v.  
DANIEL PARAMO, Warden,  
Respondent.

No. 2:16-cv-1884 MCE GGH HC

ORDER

PROCEDURAL BACKGROUND

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, ECF No. 1, together with a Motion to Stay proceeding on the Petition pursuant to Rhines v. Weber, 544 U.S. 269 (2005), ECF No. 2, and a Motion for Extension of Time to file an IFP. ECF No. 3. On August 17, 2016, Magistrate Judge Hollows issued an Order and Findings and Recommendations extending Petitioner’s time to file an IFP, which apparently crossed in the mail with his completed application,<sup>1</sup> and recommended that Petitioner’s Motion to Stay be granted. ECF No. 6 (hereafter Order/F & Rs). In that Order/F & Rs, Magistrate Judge Hollows also stated that Petitioner was to file his state petition for habeas corpus within 28 days, and warned that failure to do so might result in the dismissal of his petition in this court. Id. That Order/F & Rs

<sup>1</sup> Petitioner filed his completed IFP Application on August 16, 2016, ECF No. 5, and the court granted his request to proceed in forma pauperis on August 19, 2016. ECF No. 7.

1 also referred the matter to the District Court Judge to be assigned to the action, and directed  
2 Petitioner to file any objections to the Order/F & Rs within 14 days from August 17, 2016.  
3 Petitioner filed Objections on August 31, 2016, within the 14 day time limit. ECF No. 8. The  
4 Honorable Morrison C. England, Jr. was assigned as the presiding district judge on August 17,  
5 2016.

#### 6 DISCUSSION

7 In his Objections petitioner objects to the Order/F & Rs on two grounds: (1) to what he  
8 perceived as a finding by this court that his federal habeas petition was not filed timely; and (2)  
9 twenty-eight days is an insufficient time for him to file his state court petition. The court will  
10 address these objections individually.

11 1. Objection to Court “finding” that the federal habeas petition is untimely.

12 A clarification of the Order/F & Rs should resolve this objection. Magistrate  
13 Judge Hollows actually made *no finding* with regard to the timeliness of the federal habeas  
14 petition; that court merely informed plaintiff that a Rhines stay does not extend the time for filing  
15 that petition, nor does it excuse procedural default if such is found by the state courts. ECF No. 6  
16 at 5. The only basis upon which the issue would be addressed would be if a motion to dismiss is  
17 ultimately filed by Respondent demonstrating that the filing was untimely. The court has in fact  
18 made no finding whatsoever about the timeliness or the untimeliness of the Petition.

19 2. Objection that 28 days is an insufficient time to file state petition

20 In his objection, petitioner points out that he has had a difficult time compiling the record  
21 with regard to his unexhausted claim in that his appellate counsel, who he contends was  
22 ineffective in his assistance to Petitioner, did not complete production of his trial transcript and  
23 the pleading files until June 17, 2016. Those documents amount to at least 2,000 pages that  
24 petitioner must review to identify elements to be included in his state habeas petition.<sup>2</sup> He

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26 <sup>2</sup> Petitioner also states that he was diagnosed with multiple sclerosis in February 2015 and  
27 although his petition for review was decided on May 13, 2015 he was not notified of that denial  
28 until April 1, 2016, id. 1:19-25, and did not finally receive the documents he requested from  
appellate counsel until June 17, 2016, id. at 2:12-13, after he filed a complaint with the California  
State Bar, id. at 2:2-4


1 therefore requests that he be given a minimum of ninety (90) days to file that state petition. The  
2 court finds that this request for more time is not unreasonable under the circumstances;  
3 petitioner shall have 90 days from the date of this Order to file that petition.

4 Accordingly, the IT IS HEREBY ORDERED THAT:

- 5 • As modified herein, the Order/Findings and Recommendations (ECF No. 6) are  
6 adopted in full.
- 7 • Petitioner's Request for a (Rhines) Stay is GRANTED.
- 8 • Petitioner shall, within ninety (90) days of the date of this Order, file his state  
9 petition for habeas corpus; failure to timely file the state habeas petition may  
10 result in a dismissal of this action.

11 IT IS SO ORDERED.

12 Dated: January 5, 2017

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14 MORRISON C. ENGLAND, JR.  
15 UNITED STATES DISTRICT JUDGE  
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