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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK A. VAUGHN,
Petitioner,
v.
STUART SHERMAN,
Respondent.

No. 2:16-cv-2384 JAM CKD P

ORDER

Petitioner is a state prisoner proceeding pro se with a first amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Currently pending before the court is respondent’s motion to dismiss the petition based on the failure to exhaust state court remedies. ECF No. 29. Petitioner has opposed the motion requesting a stay and abeyance of the petition if the court finds that he has not properly exhausted his federal claims for relief. ECF No. 31 at 5. Respondent failed to address petitioner’s request for a stay. See ECF No. 32 (Reply to Opposition to Motion to Dismiss).

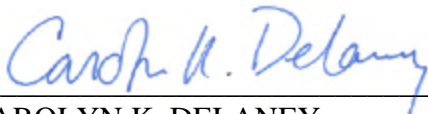
In order to fully resolve the pending motion to dismiss, the court requires further briefing by the parties concerning the applicability of a Rhines stay in the present case. See Rhines v. Weber, 544 U.S. 269 (1995). Petitioner is advised that the court may stay a petition and hold it in abeyance pursuant to Rhines only if (1) petitioner demonstrates good cause for the failure to have previously exhausted the claims in state court, (2) the claims at issue potentially have merit, and

1 (3) petitioner has been diligent in pursuing relief. See also Mena v. Long, 813 F.3d 907, 910-12
2 (9th Cir. 2016) (extending the Rhines stay and abeyance procedure to federal habeas petitions that
3 are wholly unexhausted).

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Petitioner shall file a request for a stay and abeyance addressing each of the three
6 Rhines factors described above no later than December 29, 2017;
- 7 2. Respondent may file an opposition to the request for a stay no later than January 12,
8 2018; and,
- 9 3. The parties are advised that any request for an extension of time of this briefing
10 schedule is disfavored.

11 Dated: November 30, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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