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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 VINCENT HALL,

No. C 13-1426 TEH (PR)

5                   Petitioner,

ORDER REGARDING MIXED PETITION  
FOR WRIT OF HABEAS CORPUS

6                   v.

7 RALPH M. DIAZ, Warden,

Docket # 1

8                   Respondent.  
9  
10 \_\_\_\_\_/

11                   On March 29, 2013, Petitioner Vincent Hall, an inmate at  
12 the California Substance Abuse Treatment Facility and State Prison,  
13 filed a petition for a writ of habeas corpus pursuant to 28 U.S.C.  
14 § 2254. On the same date, Petitioner paid the \$5.00 filing fee.  
15 For the following reasons, the Court finds that Petitioner has filed  
16 a mixed petition and orders Petitioner to inform the Court about how  
17 he wishes to proceed.

18                   I

19                   Petitioner's federal petition provides the following  
20 information.

21                   Petitioner was convicted by a jury in the Superior Court  
22 of San Francisco County of second degree murder with a knife and  
23 three counts of possession for sale or transportation of oxycodone.  
24 On March 13, 2009, the Superior Court sentenced Petitioner to  
25 seventy-eight years to life. Petitioner appealed his conviction to  
26 the California Court of Appeal, which affirmed the conviction in  
27 2011. The California Supreme Court denied the petition for review  
28 in 2012. Petitioner then filed the instant federal petition for a



1 opportunity to pass upon and correct alleged violations of its  
2 prisoners' federal rights.'" Picard v. Connor, 404 U.S. 270, 275  
3 (1971) (citations omitted). The court generally may not grant  
4 relief on an unexhausted claim, see 28 U.S.C. § 2254(b)(1).

5           The general rule is that a federal district court must  
6 dismiss a federal habeas petition containing any claim as to which  
7 state remedies have not been exhausted. See Rose v. Lundy, 455 U.S.  
8 509, 522 (1982). A dismissal solely for failure to exhaust is not a  
9 bar to returning to federal court after exhausting available state  
10 remedies. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th  
11 Cir. 1995). However, when faced with a post-AEDPA mixed petition,  
12 as is the case here, the district court must sua sponte inform the  
13 habeas petitioner of the mixed petition deficiency and provide him  
14 an opportunity to amend the mixed petition by withdrawing his  
15 unexhausted claims and proceeding only on his exhausted claims, or  
16 of dismissing the entire mixed petition and returning to federal  
17 court with a new petition once all claims are exhausted. Jefferson  
18 v. Budge, 419 F.3d 1013, 1016 (9th Cir. 2005) (citing Rhines v.  
19 Weber, 544 U.S. 269, 277 (2005)).

20           Petitioners with mixed petitions also may seek a stay of  
21 the petition pursuant to Pace v. DiGuglielmo, 544 U.S. 408, 416  
22 (2005), under which a prisoner may file a protective petition in  
23 federal court and ask the court to stay federal habeas proceedings  
24 until all state remedies are exhausted. District courts have the  
25 authority to issue such stays. Rhines, 544 U.S. at 277-278. Under  
26 Rhines, a stay is appropriate where the district court determines  
27  
28

1 that good cause existed for the petitioner's failure to exhaust his  
2 claims in state court, and that such claims are potentially  
3 meritorious. Id.; see also Pace, 544 U.S. at 416.

4 III

5 Based on the foregoing, the Court orders that:

6 Within thirty (30) days from the date of this Order,  
7 Petitioner shall inform the court in writing whether he wishes to  
8 (1) withdraw his unexhausted claims and proceed only on his  
9 exhausted claims; (2) dismiss the entire mixed petition and return  
10 to federal court with a new petition once all claims are exhausted;  
11 or (3) move for a stay of the petition if he can show that there was  
12 good cause for his failure to exhaust the unexhausted claims in  
13 state court and that the claims are potentially meritorious. See  
14 Rhines, 544 U.S. at 277.

15 Failure to respond within the designated time will result  
16 in the dismissal of the entire mixed petition without prejudice to  
17 filing a new federal petition containing only exhausted claims.

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19 IT IS SO ORDERED.

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21 DATED 04/22/2013

  
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22 THELTON E. HENDERSON  
23 United States District Judge  
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