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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARMANDO GARCIA-WEHR,
Petitioner,
v.
R. GROUNDS,
Respondent.

Case No. [15-cv-00370-VC](#) (PR)

**ORDER DENYING MOTION TO STAY;
ISSUING NEW BRIEFING SCHEDULE**

Re: Dkt. No. 4

Petitioner Armando Garcia-Wehr moves, under *Rhines v. Weber*, 544 U.S. 269 (2005), to stay and abey his petition so that he may exhaust two claims in state court. The Court has reviewed the petition Garcia-Wehr submitted to the California Supreme Court, Pet'n, Ex. B, ECF Dkt. No. 1-4 at 31-51; Ex. C, Dkt. Nos. 1-6, 1-7 and 1-8, finds that the two claims are stated with enough particularity that they are exhausted within the meaning of federal habeas law. And the respondent agrees that the claims are exhausted. Therefore, there is no need for Garcia-Wehr to return to state court to exhaust those two claims.

In his reply brief, Garcia-Wehr fleetingly mentions a third potential unexhausted claim, for ineffective assistance of counsel. The question whether a stay is warranted for exhaustion of this claim is not properly presented, because it was not part of the motion for a stay. Moreover, Garcia-Wehr has done nothing to show that a stay for exhaustion of a claim for ineffective assistance of counsel is warranted under *Rhines*.

Accordingly, Garcia-Wehr's motion to stay his petition is denied. The two claims in Garcia-Wehr's motion are exhausted and will be briefed with the other claims in the petition. The briefing schedule on Garcia-Wehr's petition is reinstated. Within twenty-eight days from the date of this order, the respondent shall file an answer or other responsive pleading in response to the Court's order to show cause. If Garcia-Wehr wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on the respondent within thirty days of his receipt of the answer. If the respondent files a motion to dismiss, Garcia-Wehr may file an opposition or a

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statement of non-opposition to the motion within thirty days of receipt of the motion and respondent shall file a reply within fourteen days of receipt of the opposition.

This order terminates docket number 4.

IT IS SO ORDERED.

Dated: August 13, 2015



VINCE CHHABRIA
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARMANDO GARCIA-WEHR,
Plaintiff,
v.
R. GROUNDS,
Defendant.

Case No. [15-cv-00370-VC](#)

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 13, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Armando Garcia-Wehr ID: AG-4922
Salinas Valley State Prison B3-237
PO Box 1050
Soledad, CA 93960

Dated: August 13, 2015

Richard W. Wieking
Clerk, United States District Court

By: 
Kristen Melen, Deputy Clerk to the
Honorable VINCE CHHABRIA