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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHANSAMONE APHAYAVONG,

Petitioner,

vs.
A. MALFI, Warden,

Respondent.

CASE NO. 06cv2552-IEG (WMC)
ORDER

On or about January 9, 2007, Petitioner, a state prisoner proceeding *pro se*, submitted to the Court a "Motion for a Stay and Abeyance to Exhaust Additional Issues in the State Supreme Court." Again on January 26, 2007, Petitioner submitted a "Motion for a Stay and Abeyance to Exhaust Additional Issues in the State Supreme Court." In both motions, Petitioner asks the Court to hold his case in abeyance so he can return to the state court and "exhaust all claims entitled." [P's January 26, 2007, Mtn. at 1.] Despite Petitioner's attempt to justify his request, both motions lack the necessary information for the Court to decide whether a stay is justified in accordance with *Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528 (2005). The stay and abeyance of a mixed petition is appropriate only when the district court finds: 1) there was good cause for failure to exhaust the claim; 2) the claim is not plainly meritless; and 3) there is no indication that the failure to exhaust was for purposes of delay. *Id.* at 277-78.

Therefore, the Court issues the following Order:

- 1. Petitioner shall submit a supplement (limited to 10 pages) to his motion which includes:


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- a. Identification of the claims in the Petition that are unexhausted;
- b. A brief statement on the merits of Petitioner's unexhausted claims;
- c. A brief statement on whether good cause exists for Petitioner's failure to exhaust his claims in state court before filing his federal Petition;
- d. A brief statement on whether Petitioner's claims would be time-barred from returning to federal court after he exhausts his state judicial remedies if his motion for stay-and-abey is denied.

Thirty days after Petitioner submits his supplement, Respondent shall file a response addressing the same factors presented here. If Petitioner does not submit a supplement conforming to this order, the Court will recommend that his motion be denied without prejudice.

IT IS SO ORDERED.

DATED: February 13, 2007


Hon. William McCurine, Jr.
U.S. Magistrate Judge
United States District Court

cc: Honorable Irma Gonzalez
U.S. District Judge
All Counsel and Parties of Record