

1 to indicate that two of his five claims had been exhausted in state Court, (*id.* at 2). The
2 Court then “notifie[d] Petitioner of his options[,]” (*id.* at 2; *see also id.* at 3–5 (outlining in
3 full Petitioner’s options)), and gave Petitioner until July 7, 2017, to correct the above-
4 described deficiencies, (*id.* at 6). On June 16, 2017, Petitioner attempted to comply, in part,
5 with the Court’s Order by filing a non-compliant document stating that it was a scrivener’s
6 error that “[P]etitioner did not mark on the respective space to state that he had already
7 filed the claims four and five, as he did on claims one, two and three.” (ECF No. 3-1
8 (noncompliant, Court-rejected document entitled “Motion in Support of Clerical Error”).)
9 Petitioner did not mention the filing fee. (*See id.*)

10 Next, on July 14, 2017, Petitioner filed the instant Motion, (Ext. Mot. 1), attempting
11 to detail “all the grounds submitted at the California Supreme Court for review and
12 exhaustion[,]” (Ext. Mot. 2).¹ Accordingly, it appears that Petitioner has chosen the first
13 option outlined in the Court’s prior Order. (*See* Prior Dismissal Order 3 (“Petitioner may
14 file further papers with this Court to demonstrate that he has in fact exhausted the claims
15 the Court has determined are unexhausted.”).) And although it is not entirely clear that
16 Petitioner has in fact exhausted each claim, (*compare* Ext. Mot. 6–9 (potentially the point-
17 headings from the underlying habeas petition to the California Supreme Court, alleging
18 that “cumulative prejudicial effect” or errors “denied [Petitioner] a fair trial under state and
19 federal due process[,]” but nowhere mentioning any alleged failure by counsel to seek a
20 mistrial), *with* Pet. for Writ of Habeas Corpus 20, 25 (Petitioner’s federal habeas petition
21 arguing that “the cumulative effect of errors . . . violat[ed] . . . federal due process
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25 ¹ Petitioner’s latest filing, although dated July 6, 2017, (Ext. Mot. 1), was not received until July 14, 2017,
26 and therefore is not timely pursuant to the Court’s Prior Dismissal Order, (*see* Prior Dismissal Order 6).
27 However, it is clear that Petitioner attempted to at least partially comply with the Court’s directive, (*see*
28 ECF No. 3), and Petitioner further notes in his Extension Motion that “the person who was helping
[P]etitioner to file his habeas corpus [petition] was transferred to another prison, taking with him any
documents filed in any court, without explaining [to] petitioner any of the document[s] [which had been]
filed or any due dates[,]” (Ext. Mot. 1). Therefore, good cause appearing, the Court **GRANTS** Petitioner’s
Motion for an extension of time by which to respond to the Court’s Prior Dismissal Order.

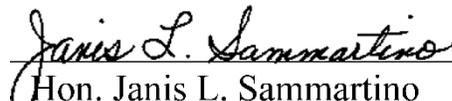
1 principles” and that “Counsel violated [P]etitioner’s 6th Amend[ment rights] . . . whe[n]
2 he failed to move for a mistrial”), ECF No. 1), the Court accepts Petitioner’s argument.

3 However, although Petitioner in his Extension Motion states that he “submits his
4 \$5.00 filing fee[,]” (Ext. Mot. 2), and attaches a Moneygram receipt for \$5.00, (*id.* at 12),
5 the Court has not received Petitioner’s \$5.00 filing fee. Accordingly, Petitioner’s case
6 **REMAINS DISMISSED WITHOUT PREJUDICE**. If Petitioner wishes to proceed with
7 this case he must, no later than September 29, 2017, either (1) pay the \$5.00 filing fee or
8 (2) move to proceed *in forma pauperis*. If petitioner chooses to pay the \$5.00 filing fee, he
9 should submit the fee simultaneously with a copy of this Order and reference the case
10 name—*Miguel Angel Torres v. Warden Raymond Madden*—as well as the case number—
11 17cv865-JLS (PCL). *See also Fees of the U.S. District Court; 28 U.S.C. § 1914 and Local*
12 *Rule 4.5*, United States District Court (Feb. 8, 2017), [https://www.casd.uscourts.gov/](https://www.casd.uscourts.gov/Attorneys/SiteAssets/SitePages/FeesOfTheUSDistrictCourt/FEE%20SCHEDULE%20Ef%202-8-17.pdf)
13 [Attorneys/SiteAssets/SitePages/FeesOfTheUSDistrictCourt/FEE%20SCHEDULE%20Ef](https://www.casd.uscourts.gov/Attorneys/SiteAssets/SitePages/FeesOfTheUSDistrictCourt/FEE%20SCHEDULE%20Ef%202-8-17.pdf)
14 [f%202-8-17.pdf](https://www.casd.uscourts.gov/Attorneys/SiteAssets/SitePages/FeesOfTheUSDistrictCourt/FEE%20SCHEDULE%20Ef%202-8-17.pdf) (explaining Southern District of California filing fee amounts and
15 payment procedures).

16 Additionally, although the Clerk of Court previously sent Petitioner a blank Southern
17 District of California *In Forma Pauperis* Application, (*see* Prior Dismissal Order 6), the
18 Clerk of Court **SHALL** send another blank form along with a copy of this Order.

19 **IT IS SO ORDERED.**

20 Dated: July 26, 2017

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22 Hon. Janis L. Sammartino
23 United States District Judge
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