

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SUTEN BLACKGOLD,
Petitioner,
v.
RAYMOND MADDEN, et al.,
Respondents.

Case No.: 21-cv-1801 MMA (JLB)

**ORDER DENYING REQUEST FOR STAY
AND ABEYANCE WITHOUT PREJUDICE
TO RENEWAL UPON FILING OF FIRST
AMENDED PETITION**

[Doc. No. 5]

On October 21, 2021, Petitioner, a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 along with a motion to proceed in forma pauperis. *See* Doc. Nos. 1–2. On October 26, 2021, the Court issued an Order granting Petitioner’s motion to proceed in forma pauperis and dismissing the Petition without prejudice for failure to allege exhaustion of state judicial remedies and stated: “If Petitioner wishes to proceed with this habeas action, Petitioner must file a First Amended Petition that cures the pleading deficiencies outlined in this Order on or before **December 27, 2021**.” Doc. No. 3 at 4.

On November 16, 2021, *nunc pro tunc* to November 15, 2021, Petitioner filed a document entitled “Requesting To Stay And Abeyance,” [sic] indicating he was aware of

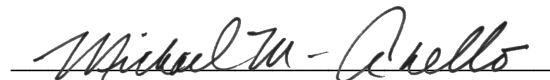
1 the December 27, 2021 deadline to file a First Amended Petition and requesting a stay
2 and abeyance for purpose of exhausting state judicial remedies. Doc. No. 4 at 1.

3 The Court does not currently have jurisdiction to consider Petitioner's request for
4 stay and abeyance of his federal proceedings because there is no Petition on file and the
5 case has been dismissed without prejudice. The Court dismissed the Petition in the
6 October 26, 2021, Order and Petitioner has not yet filed a First Amended Petition.
7 Accordingly, the Court **DENIES** Petitioner's request for stay and abeyance without
8 prejudice to Petitioner renewing the request upon the filing of a First Amended Petition.

9 Because Petitioner has not identified an exhausted claim, in order to proceed with
10 this habeas action, Petitioner may file a First Amended Petition on or before **December**
11 **27, 2021**, along with a renewed request for stay and abeyance identifying which claims
12 Petitioner seeks to exhaust in state court. *See Rhines v. Weber*, 544 U.S. 269, 277–78
13 (2005) (explaining that to warrant stay and abeyance, a habeas petitioner must
14 demonstrate there are arguably meritorious claim(s) which he wishes to return to state
15 court to exhaust, that he is diligently pursuing his state court remedies with respect to
16 those claim(s), and that good cause exists for his failure to timely exhaust his state court
17 remedies); *see also Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016) (“[A] district court
18 has the discretion to stay and hold in abeyance fully unexhausted petitions under the
19 circumstances set forth in *Rhines*.”). The Court therefore **DIRECTS** the Clerk of Court
20 to mail Petitioner a blank Amended Petition for Writ of Habeas Corpus pursuant to 28
21 U.S.C § 2254 together with a copy of this Order.

22 **IT IS SO ORDERED.**

23 Dated: November 17, 2021

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25 HON. MICHAEL M. ANELLO
26 United States District Judge
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