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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12  
 13 **JONATHAN MONTANA,**

25-cv-09717-TLT

14 Petitioner,

**OPPOSITION TO MOTION FOR A  
 STAY AND ABEYANCE**

15 v.

16 **JEFF MACOMBER, Secretary of the**  
 17 **California Department of Corrections and**  
 18 **Rehabilitation,**

19 Respondent.

20  
 21 **INTRODUCTION**

22 On November 12, 2025, petitioner filed a 28 U.S.C. § 2254 petition for writ of habeas  
 23 corpus challenging his state court criminal judgment. Dkt. No. 1. That same date, he also filed a  
 24 motion for a stay and abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), so that he  
 25 could exhaust claims of ineffective assistance of trial counsel contained in his federal petition.  
 26 Dkt. No. 2. Respondent opposes the motion because petitioner has failed to show good cause for  
 27 a stay or diligence in exhausting his claims.  
 28

1 **STATEMENT OF THE CASE**

2 A Santa Clara County jury convicted petitioner of sodomy by use of an intoxicating,  
3 anesthetic, or controlled substance; sodomy by force; oral copulation by use of an intoxicating,  
4 anesthetic, or controlled substance; oral copulation by force; rape by use of an intoxicating,  
5 anesthetic, or controlled substance; and rape by force in case number  Ex. F to *Rhines*  
6 Mot. at 2. The trial court sentenced petitioner to the lesser term of three years on the forcible  
7 sodomy count, with concurrent separate three-year terms on the forcible oral copulation and  
8 forcible rape counts. The court also imposed but stayed separate three-year terms on the counts  
9 of sodomy of an intoxicated person, oral copulation of an intoxicated person, and rape of an  
10 intoxicated person. *Id.*

11 On June 11, 2024, the California Court of Appeal affirmed the judgment on appeal. Ex. F  
12 to *Rhines* Mot. On August 14, 2024, the California Supreme Court denied a petition for review.  
13 *Id.* at 1.

14 As noted above, petitioner initiated this action on November 12, 2025, by filing a counseled  
15 petition for writ of habeas corpus and a motion for a *Rhines* stay. Dkt. Nos. 1, 2. On December  
16 23, 2025, after errors regarding the naming and service of respondent were corrected, the Court  
17 set a briefing schedule for the *Rhines* motion. Dkt. No. 24.

18 **ARGUMENT**

19 **I. PETITIONER FAILS TO MEET THE *RHINES* STANDARD FOR A STAY AND ABEYANCE**

20 In *Rhines*, the Supreme Court held that a district court has discretion to stay a mixed  
21 petition containing both exhausted and unexhausted claims. 544 U.S. 269. Subsequently, the  
22 Ninth Circuit held that “a district court has the discretion to stay and hold in abeyance fully  
23 unexhausted petitions under the circumstances set forth in *Rhines*.” *Mena v. Long*, 813 F.3d 907,  
24 912 (9th Cir. 2016).

25 While a district court has discretion under *Rhines* to grant a stay, the Supreme Court has  
26 cautioned, “Staying a federal habeas petition frustrates AEDPA’s objective of encouraging  
27 finality by allowing a petitioner to delay the resolution of the federal proceedings. It also  
28 undermines AEDPA’s goal of streamlining federal habeas proceedings by decreasing a

1 petitioner's incentive to exhaust all his claims in state court prior to filing his federal petition."  
2 *Rhines*, 544 U.S. at 277 (citation omitted). For these reasons, stay and abeyance is appropriate  
3 "only in limited circumstances," and requires the petitioner to show good cause for his failure to  
4 exhaust his claims first in state court and that the unexhausted claims are not "plainly meritless."  
5 *Id.* "And if a petitioner engages in abusive litigation tactics or intentional delay, the district court  
6 should not grant him a stay at all." *Id.* at 278. Thus, "[u]nder *Rhines*, a district court must stay a  
7 mixed petition only if: (1) the petitioner has 'good cause' for his failure to exhaust his claims in  
8 state court; (2) the unexhausted claims are potentially meritorious; and (3) there is no indication  
9 that the petitioner intentionally engaged in dilatory litigation tactics." *Wooten v. Kirkland*, 540  
10 F.3d 1019, 1023 (9th Cir. 2008).

11 While "good cause" in this context does not mean "extraordinary circumstances," *Jackson*  
12 *v. Roe*, 425 F.3d 654, 661-62 (9th Cir. 2005), it does require a petitioner to "set forth a reasonable  
13 excuse, supported by sufficient evidence," to justify the failure to exhaust. *Blake v. Baker*, 745  
14 F.3d 977, 982 (9th Cir. 2014). A "bald assertion cannot amount to a showing of good cause," *id.*,  
15 nor can allegations that are "insufficiently detailed." *King v. Ryan*, 564 F.3d 1133, 1138 (9th Cir.  
16 2009).

17 The Ninth Circuit has held that the standard set forth in *Martinez v. Ryan*, 566 U.S. 1  
18 (2012) to overcome a procedural default of a claim of ineffective assistance of trial counsel by  
19 asserting ineffective assistance of post-conviction counsel as cause, also applies to *Rhines* stay  
20 requests. *Blake*, 745 F.3d at 983. The court stated, "good cause under *Rhines*, when based on  
21 IAC, cannot be any more demanding than a showing a cause under *Martinez* to excuse state  
22 procedural default." *Id.* at 983-84. Thus, a petitioner's contention that his state post-conviction  
23 counsel was ineffective for failing to exhaust a claim of ineffective assistance of trial counsel may  
24 constitute good cause for a stay, where he presents more than a "bare allegation of state post-  
25 conviction IAC" and offers a "concrete and reasonable excuse, supported by evidence," that state  
26 post-conviction counsel failed to investigate and present a claim to the state court. *Id.* In *Doerr*  
27 *v. Shinn*, 127 F.4th 1162, 1174-75 (9th Cir. 2025), the Ninth Circuit held, "Doerr's failure to  
28 present his ineffective assistance at sentencing claim in state court was due to the ignorance or

1 inadvertence of his original state postconviction counsel. That is sufficient to constitute good  
2 cause under *Rhines*.”

3 In its opinion on appeal, the California Court of Appeal noted that any ineffectiveness  
4 claims petitioner wished to raise that were based on evidence outside the trial record should be  
5 raised on state habeas. *See* Ex. F to *Rhines* Mot. at 14. Petitioner’s exhibits<sup>1</sup> show that he knew  
6 about the court of appeal’s decision on the day it issued, and that on August 21, 2024, appellate  
7 counsel told him that review had been denied and informed him of the statute of limitations for  
8 filing state and federal habeas petitions. Petitioner’s exhibits also show that petitioner contacted  
9 attorney Benjamin Lechman as early as May 2024 about pursuing habeas relief, yet petitioner did  
10 not retain Mr. Lechman until October 23, 2024. Petitioner does not claim, nor could he, that his  
11 delay in pursuing state habeas relief before October 23, 2024 constitutes good cause under  
12 *Rhines*.

13 Rather, petitioner’s entire good cause argument rests on the ten months Mr. Lechman was  
14 representing him. He contends that Mr. Lechman “performed no investigation, made serial  
15 excuses, failed to schedule and/or conduct any telephone conferences, and did not file any habeas  
16 petitions in state or federal court,” despite having received payment. *Rhines* Mot. at 6. Petitioner  
17 contends that “[t]his abandonment” by Mr. Lechman constitutes good cause under *Rhines* for his  
18 failure to exhaust his state remedies. *Id.* at 7.

19 However, petitioner’s exhibits reflecting his alleged texts, calls, and emails with Mr.  
20 Lechman show no abandonment. On the contrary, they show that Mr. Lechman was always  
21 courteous and responsive to petitioner, and stayed in touch with him throughout the entire time he  
22 represented him. It also shows that Mr. Lechman performed work on the case, such as contacting  
23 petitioner’s appellate counsel, discussing the case with petitioner, hiring a paralegal to prepare  
24 transcript summaries, and going over case materials. Mr. Lechman also informed petitioner three  
25 months before the filing deadline of the federal petition that he would be unable to meet the

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27 <sup>1</sup> We note that no foundation or authentication has been provided for these exhibits, and  
28 that many of them appear to be out of order, incomplete, and taken out of context. They also  
consist of hearsay. While we take them at face value for purposes of this motion, we do not  
concede the truth or accuracy of their contents or that they satisfy the rules of evidence.

1 deadline, due to his work on a death eligible murder case. He offered a refund to petitioner and  
2 referred him to petitioner's current habeas counsel, John D. Kirby, to take over the case.

3 Petitioner immediately hired Mr. Kirby and three months later filed a timely "protective"  
4 federal habeas petition, raising the claims he wished to exhaust in state court. Inexplicably,  
5 petitioner did not file a state habeas petition raising those same claims at the time he filed his  
6 federal petition, *see* Ex. H to *Rhines* Mot., Kirby Decl. at ¶ 3 (declaring that no state habeas  
7 petition has been filed), even though he admittedly "prepare[d] both state and federal habeas  
8 petitions." *See* Pet. at 6. Mr. Lechman certainly cannot be faulted for petitioner's failure to  
9 submit his claims to the state court at the same time he submitted them to the federal court.  
10 Accordingly, petitioner cannot show that his failure to exhaust state court remedies was "due to  
11 the ignorance of inadvertence of his original state postconviction counsel." *Cf. Doerr v. Shinn*,  
12 127 F.4th at 1174-75.

13 Additionally, to this day, petitioner has still not initiated state habeas proceedings. *See*  
14 *Rhines* Mot. at 13 (proposing that he file a state habeas petition in the superior court within 30  
15 days of a stay order); Ex. H to *Rhines* Mot., Kirby Decl. at ¶ 6 (declaring same). His dilatory  
16 behavior in exhausting his state court remedies does not show diligence warranting a *Rhines* stay.  
17 The Ninth Circuit recently held "that in exercising sound discretion when evaluating good cause  
18 under *Rhines*, the district court must consider a petitioner's diligence (or lack thereof) in pursuing  
19 his state court remedies after he files his federal petition." *Banks v. Allison*, 140 F.4th 1181, 1187  
20 (9th Cir. 2025).

21 In sum, petitioner has shown neither good cause for his failure to exhaust his state court  
22 remedies nor diligence in bringing his unexhausted claims to the state court. Accordingly,  
23 respondent respectfully requests that his motion for a stay be denied.

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**CONCLUSION**

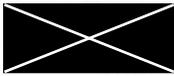
For the foregoing reasons, respondent respectfully requests that the motion for a stay and abeyance be denied.

Dated: January 12, 2026

Respectfully submitted,

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JILL M. THAYER  
Deputy Attorney General

/s/ Michele J. Swanson  
MICHELE J. SWANSON  
Supervising Deputy Attorney General  
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### CERTIFICATE OF SERVICE

Case Name: **Jonathan Montana v.  
Jeff Macomber, Secretary of  
the California Department of  
Corrections and Rehabilitation** No. **25-cv-09717-TLT**

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I hereby certify that on January 12, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### OPPOSITION TO MOTION FOR A STAY AND ABEYANCE

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 12, 2026, at San Francisco, California.

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S. Chiang  
Declarant

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/s/ S. Chiang  
Signature