



1 timeliness objections and eventually, the Court dismissed that case for lack of exhaustion. In case  
2 number 1:15-cv-01469-SKO, Petitioner again claimed ineffective assistance of counsel. Once again,  
3 the Court dismissed the action for lack of exhaustion. Petitioner has now advised the Court that his  
4 claim has been exhausted in the California Supreme Court. (Doc. 1, p. 10).

5 However, the question of timeliness remains, and the issue was never squarely addressed in the  
6 original case, i.e., 1:14-cv-00863-MJS, nor raised at all in case number 1:15-cv-01469-SKO. In that  
7 first petition, Petitioner argued for a different starting point for the AEDPA one-year limitation period  
8 based on his claim that he did not discover the factual basis for his ineffective assistance claim until  
9 well after the statutory period would have begun under normal circumstances. Although it appears  
10 that Respondent contested this allegation regarding the date on which the one-year period commenced,  
11 the issue was never resolved by the Magistrate Judge in that case. Moreover, Petitioner never  
12 provided information as to when he contended he discovered the factual basis for his claim.

13 Based on the foregoing new information, the Court is reluctant to proceed with its timeliness  
14 analysis without affording Petitioner a second opportunity to provide this Court with evidence  
15 regarding when he became aware of the factual basis for his claim of ineffective assistance or any  
16 other evidence that might bear upon the commencement or running of the one-year period. If  
17 Petitioner fails to provide **full and adequate** information sufficient to show a different starting date  
18 for the one-year period, the Court will issue a new Findings and Recommendations to dismiss the  
19 petition as untimely.

## 20 ORDER

21 For the foregoing reasons, the Court HEREBY ORDERS:

- 22 1. The Findings and Recommendation issued on March 4, 2016 to dismiss the action on  
23 timeliness grounds is **WITHDRAWN**;
- 24 2. **Within 30 days** of the date of service of this order, Petitioner is **ORDERED** to show  
25 cause why the Petition should not be dismissed for violation of the one-year statute of  
26 limitations in 28 U.S.C. § 2244(d). Petitioner should provide any evidence he  
27 possesses regarding when he became aware of the factual basis for his ineffective  
28 assistance of counsel claim, if that date differs from the date the statutory period would

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have commenced under normal circumstances, i.e., at the conclusion of direct review.

**Petitioner is forewarned that his failure to comply with this order may result in a Recommendation that the Petition be dismissed pursuant to Local Rule 110.**

IT IS SO ORDERED.

Dated: March 24, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE