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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JOSE SOTO, Petitioner, v. K. CLARK, Warden, Respondent.	No. CV 07-4048 DOC (FFM) ORDER ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. The Court concurs with and adopts the findings, conclusions and recommendations of the Magistrate Judge.

IT THEREFORE IS ORDERED that respondent's Motion to Dismiss is GRANTED with leave to amend. Petitioner is given 30 days to either (1) file an amended petition deleting Ground Four or (2) file an application for a stay and abeyance.

Any such application for stay must demonstrate that: (A) there was good cause for petitioner's failure to exhaust Ground Four in state courts; (B) Ground Four is potentially meritorious; and (C) petitioner did not engage in intentionally dilatory litigation tactics. *See Rhines*, 544 U.S. at 277-78.

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If petitioner does apply for a stay and abeyance, respondent must file his opposition (if any) to such application within 20 days of receipt thereof.

DATED: October 24, 2008

DAVID O. CARTER
United States District Judge