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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW KWASI DONKOR,	)	Case No. EDCV 14-01408-GW (DTB)
Petitioner,	)	
vs.	)	ORDER ACCEPTING FINDINGS,
KIM HOLLAND, Warden,	)	CONCLUSIONS AND
Respondent.	)	RECOMMENDATIONS OF UNITED
	)	STATES MAGISTRATE JUDGE

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Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. Objections to the Report and Recommendation have been filed herein. Having made a de novo determination of those portions of the Report and Recommendation to which objections have been made, the Court concurs with and accepts the findings, conclusions and recommendations of the Magistrate Judge with the following exceptions: At page 8, lines 4-19 of the Report and Recommendation, the Magistrate Judge sets out the test for determining whether gap tolling is appropriate for two filings in the same court. In that test, there is no mention


1 of whether any delay is or is not reasonable. At page 9, line 23 through page 10, line  
2 23, the Report and Recommendation then introduces a requirement of “reasonable”  
3 delay, but it appears to draw that requirement from cases involving filings in different  
4 state courts. Here, the question is whether there should be gap tolling between the  
5 filing of petitions in the same court, i.e. the California Supreme Court. See Report and  
6 Recommendation at page 8, lines 1-4. The Court declines to adopt the analysis in the  
7 Report and Recommendation regarding “reasonable delay,” set forth at page 8, line  
8 25 through page 9, line 13.

9 At page 6, line 24, a comma should be inserted between “15” and “2013.”

10 At page 8, line 18, the decision of “Stancie v. Clay” should read “Stancle v.  
11 Clay.”

12 In light of the following exceptions, IT THEREFORE IS ORDERED that  
13 respondent’s Motion to Dismiss is granted and that Judgment be entered denying the  
14 First Amended Petition and dismissing this action with prejudice.

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16 DATED: June 12, 2017

  
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GEORGE H. WU  
UNITED STATES DISTRICT JUDGE