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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS EARL EVANS,

CV F 07-00678 AWI DLB HC

Petitioner,

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, GRANTING
PETITIONER'S REQUEST TO WITHDRAW
UNEXHAUSTED CLAIMS, DENYING
MOTION TO DISMISS, AND REFERRING
MATTER BACK TO MAGISTRATE JUDGE

v.

JAMES TILTON,

Respondent.

[Docs. 11, 13, 17]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On [September 11, 2007](#), the Magistrate Judge issued Findings and Recommendations recommending that Respondent's motion to dismiss the petition as containing both exhausted and unexhausted claims in violation of 28 U.S.C. § 2254(b)(1). In lieu of dismissal, without prejudice, the Court granted Petitioner the opportunity to withdraw the unexhausted claims and proceed only with the exhausted claims.

On [December 20, 2007](#), Petitioner filed a request to dismiss the unexhausted claims and proceed with the exhausted claims. (Court Doc. 17.) As such, Respondent's motion to dismiss the petition is now moot and shall be denied on that ground.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court finds that the Findings and Recommendation is supported by the record and proper analysis.

1 Accordingly, it is HEREBY ORDERED that:

- 2 1. The Findings and Recommendations issued September 11, 2007, is ADOPTED in
3 FULL;
- 4 2. Petitioner's request to withdraw the unexhausted claims is GRANTED;
- 5 3. Respondent's motion to dismiss the petition, without prejudice, is DENIED as
6 MOOT; and,
- 7 4. The matter is referred back to the Magistrate Judge for further proceedings.
- 8

9 IT IS SO ORDERED.

10 **Dated: February 2, 2008**

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE