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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ZANE HUBBARD,

Petitioner,

v.

CONNIE GIPSON,

Respondent.

) Case No.: 1:13-cv-01758-LJO-JLT  
)  
) ORDER ADOPTING FINDINGS AND  
) RECOMMENDATIONS (Doc. 25)  
)  
) ORDER GRANTING MOTION TO DISMISS (Doc.  
) 20)  
)  
) ORDER DISMISSING CLAIMS IN FIRST  
) AMENDED PETITION (Doc. 9) AND  
) SUBSEQUENT PETITION FOR WRIT OF  
) HABEAS CORPUS (Doc. 21)  
)  
) ORDER DENYING ALL PENDING MOTIONS  
) (Docs. 27, 28 & 29)  
)  
) ORDER REMANDING CASE TO MAGISTRATE  
) JUDGE FOR FURTHER PROCEEDINGS

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

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**PROCEDURAL HISTORY**

The instant petition was filed on October 23, 2013. (Doc. 1)(“the original petition”). On November 14, 2013, the Court ordered Respondent to file a response. (Doc. 7). On December 6, 2014, before Respondent filed his response, Petitioner filed a first amended petition raising four claims: (1) use of a tainted photographic lineup; (2) admission of unreliable evidence from witness, Christina Silva; (3) ineffective assistance of counsel in representing Petitioner based on multiple reasons; and (4) an omnibus claim of prosecutorial misconduct on various grounds. (Doc. 9)(“FAP”).

On April 21, 2014, Respondent filed the instant motion to dismiss the petition for lack of exhaustion as to claims three and four. (Doc. 20). On April 23, 2014, the Court became aware that Petitioner had, on April 11, 2014, filed a separate habeas petition in this Court, no. 1:14-cv-00509-LJO-SAB (“14-509”), which, pursuant to Woods v. Carey, 525 F.3d 886, 888-890 (9<sup>th</sup> Cir. 2008), must be treated as a motion to amend the pleadings, i.e., in this case, the first amended petition. (Doc. 21). By order dated April 23, 2014, the Court directed the Clerk of the Court to docket the petition in case no. 14-509 as a motion to amend in this case. (Doc. 22). On May 2, 2014, Petitioner filed a document entitled “Traverse,” which the Court construes to be an opposition to the motion to dismiss. (Doc. 24). On January 20, 2015, the Magistrate Judge issued Findings and Recommendations to grant the motion to amend the claims to include the claims raised in case no. 14-509 (“the subsequent petition”) and to grant Respondent’s motion to dismiss claims that have not been exhausted. ([Doc. 25](#)).

The Findings and Recommendations was served upon all parties and contained notice that any objections were to be filed within twenty-one days from the date of service of that order. On February 26, 2015, Petitioner filed objections to the Magistrate Judge’s Findings and Recommendations. ([Doc. 26](#)). Subsequently, on March 26, 2015, Petitioner filed three motions: (1) a motion to “sever” this case from Petitioner’s co-defendant (Doc. 27); (2) a motion to consolidate all claims from both habeas petitions into one case (Doc. 28); and (3) a motion, inter alia, to alter the “judgment” in this case to

1 name either the State of California or the United States of America as Respondent rather than  
2 Petitioner's current warden. (Doc. 29).

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de*  
4 *novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections,  
5 the Court concludes that the Magistrate Judge's Findings and Recommendations is supported by the  
6 record and proper analysis. Petitioner's objections present no grounds for questioning the Magistrate  
7 Judge's analysis.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9
- 10 1. The Findings and Recommendations, filed January 20, 2015 (Doc. 25), is ADOPTED  
11 IN FULL.
  - 12 2. Respondent's Motion to Dismiss (Doc. 20), is GRANTED.
  - 13 3. Ground Three in the First Amended Petition and Grounds One and Three in the  
14 Subsequent Petition are DISMISSED as unexhausted. Also, those portions of Ground  
15 Four in the First Amended Petitioner relating to prosecutorial misconduct (i.e.,  
16 harassment by law enforcement and nondisclosure of inducements) are DISMISSED as  
17 unexhausted.
  - 18 4. The Court DENIES all pending motions (Docs. 27, 28, & 29).
  - 19 5. The case is REMANDED to the United States Magistrate Judge for further  
20 proceedings.

21 **IT IS SO ORDERED**  
22 **Dated: April 16, 2015**

23 /s/ Lawrence J. O'Neill  
24 **United States District Judge**