1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 RODNEY ZAYAS, Case No.: 1:13-cv-01863-LJO-JLT ORDER GRANTING PETITIONER LEAVE TO 12 Petitioner, FILE A MOTION TO STAY PROCEEDINGS TO 13 v. **EXHAUST CLAIMS** 14 KAMALA D. HARRIS, et al., THIRTY DAY DEADLINE 15 Respondents. 16 17 Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas 18 corpus pursuant to 28 U.S.C. § 2254. 19 PROCEDURAL HISTORY 20 The instant petition was filed on November 18, 2013. On November 20, 2013, the Court 21 ordered Respondent to file a response to the petition within sixty days. (Doc. 4). After requesting and 22 receiving an extension of time, Respondent filed the instant motion to dismiss on February 19, 2014,

The instant petition was filed on November 18, 2013. On November 20, 2013, the Court ordered Respondent to file a response to the petition within sixty days. (Doc. 4). After requesting an receiving an extension of time, Respondent filed the instant motion to dismiss on February 19, 2014, contending that some of the claims in the instant petition are unexhausted. (Doc. 12). Respondent argues that should Petitioner fail to withdraw those unexhausted claims, the Court should dismiss the petition. (Id.). Petitioner did not file an opposition to the motion to dismiss. Accordingly, and in order to avoid dismissing the entire petition, the Court attempted to give Petitioner the benefit of the doubt by granting him leave to withdraw the two unexhausted claims in lieu of dismissal. (Doc. 15).

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On June 2, 2014, Petitioner filed two motions. The first requested that the two unexhausted

claims be withdrawn. (Doc. 16). The second criticized this Court for failing to allow Petitioner to stay proceedings in order to exhaust the unexhausted claims, *even though Petitioner had never filed a request for issuance of a stay*. (Doc. 17).

What Petitioner apparently fails to appreciate is that it is <u>not</u> the Court's responsibility to litigate Petitioner's case for him. *Nor is it the Court's responsibility to provide legal advice to Petitioner about what legal processes are open to him and what legal options he should pursue*; that is Petitioner's responsibility. It was not this Court's obligation to explain the legal parameters of granting stays of proceedings. If Petitioner had wanted to exhaust his unexhausted claims in state court, he could simply have filed a motion making that request. Filing motions that serve the sole purpose of criticizing the Court for failing to act on Petitioner's behalf are a waste of the Court's limited judicial resources.

However, in an effort to *once again* give Petitioner the benefit of the doubt, the Court will grant Petitioner thirty days within which to file a proper motion to stay proceedings to exhaust the two unexhausted claims. If Petitioner chooses not to file such a motion, then, after expiration of the thirty-day period, the Court will grant the motion to dismiss the two unexhausted claims (Doc. 16), and the case will proceed on the remaining exhausted claims. If Petitioner files a proper motion for stay (either under the Ninth Circuit's approach in <u>Kelly v. Small</u>, 315 F.3d 1063, 1070 (9th Cir. 2004), or under the U.S. Supreme Court's approach in <u>Rhines v. Weber</u>, 544 U.S. 269, 125 S.Ct. 1528 (2005)), the Court will consider the merits of such a request and issue the appropriate orders in due course.

Accordingly, it is HEREBY ORDERED that Petitioner is granted thirty days from the date of service of this order within which to file, should he so desire, a motion for a stay of proceedings to exhaust unexhausted claims. Upon expiration of the thirty-day period, if no motion to stay has been filed, the Court will grant Petitioner's motion to withdraw the unexhausted claims.

IT IS SO ORDERED.

Dated: **July 9, 2014**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE