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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTR	RICT OF CALIFORNIA	
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11	GILBERTO DIAZ-SANCHEZ,	No. 1:14-cv-01204-DAD-SKO HC	
12 13	Petitioner,		
13 14	V.	FINDINGS AND RECOMMENDATIONS THAT THE COURT GRANT	
14	JEFFREY BEARD and NEIL McDOWELL,	PETITIONER'S SECOND MOTION TO MODIFY STAY AND ABEYANCE	
16	Respondents.	(Doc. 72)	
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18	Petitioner, Gilberto Diaz-Sanchez, is a state prisoner represented by counsel with a petition		
19	for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 31, 2018, the undersigned		
20	recommended granting Petitioner's motion for stay and abeyance, (Doc. 64), which the Court		
21	adopted on May 15, 2018. (Doc. 66.) On May 29, 2018, Petitioner filed a motion to modify the		
22	stay to exhaust additional claims with the state court, (Doc. 68), which was granted on August 22,		
23		court, (2001.00), which was granted on Magast 22,	
24	2018. (Doc. 70.)		
25		second motion to modify the stay to exhaust claims	
26	pursuant to a recent Ninth Circuit Court of Ap	peal decision. (Doc. 72.)	
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1	The undersigned, having previously found good cause for the stay, recommends granting	
2	the motion to modify the stay to include additional unexhausted claims Petitioner may present to	
3	the state court.	
4	Conclusion and Recommendations	
5	The Court hereby RECOMMENDS:	
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7	1. The prior order granting the motion for stay and abeyance, (Doc. 66), be modified	
8	to include any unexhausted claims pursuant to the recent holding in <i>Henry v. Spearman</i> , 899 F.3d	
9	703 (9th Cir. 2018).	
10	2. Petitioner is DIRECTED to file a status report within ninety (90) days of the date of	
11	this Order advising the Court of the status of the state court proceedings.	
12	3. Petitioner shall file an additional status report every ninety (90) days thereafter.	
13 14	4. Within thirty (30) days after the California Supreme Court issues a final order	
15	resolving the unexhausted claims, Petitioner shall file a motion to lift the stay and an amended	
16	habeas petition setting forth all exhausted claims. The Court shall then screen the petition pursuant	
17	to the Rules Governing Section 2254 Cases.	
18	These Findings and Recommendations will be submitted to the United States District Judge	
19	assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within thirty (30) days	
20	after being served with these Findings and Recommendations, either party may file written	
21	objections with the Court. The document should be captioned "Objections to Magistrate Judge's	
22		
23	Findings and Recommendations." Replies to the objections, if any, shall be served and filed within	
24	fourteen (14) days after service of the objections. The parties are advised that failure to file	
25	objections within the specified time may constitute waiver of the right to appeal the District Court's	
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1	order. Wilkerson v. Wheeler, 772 F.3d 834, 839 ((9th Cir. 2014) (citing Baxter v. Sullivan, 923
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3	F.2d 1391, 1394 (9th Cir. 1991)).
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5	IT IS SO ORDERED.
6	Dated: October 15, 2018 [s] Sheila K. Oberto
7	UNITED STATES MAGISTRATE JUDGE
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