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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**JAMES E. WHITE,**  
Petitioner,  
  
v.  
  
**CONNIE GIPSON, Warden,**  
Respondent.

1:14-cv-01214 MJS HC

**FINDINGS AND RECOMMENDATION TO  
LIFT STAY**

**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN A DISTRICT COURT JUDGE  
TO THE INSTANT MATTER**

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

Only Petitioner has consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c). (ECF Nos. 6.) As the Magistrate Judge does not have consent of both parties, he lacks jurisdiction to make dispositive rulings, and must do so by way of Findings and Recommendations to the District Court Judge. The Ninth Circuit has determined that motions to stay in habeas corpus matters are dispositive. Bastidas v. Chappell, 791 F.3d 1155 (9th Cir. 2015); Mitchell v. Valenzuela, 791 F.3d 1166 (9th Cir. 2015).

On August 4, 2014, Petitioner filed the instant petition along with a motion to stay

1 the proceedings. (Mot. to Stay, ECF No. 2.) Petitioner requested the Court stay his  
2 petition while he attempted to exhaust his state court claims. The Court granted the stay  
3 on August 26, 2014. (ECF No. 7.)

4 On July 13, 2015, the Court ordered Petitioner to show cause why the matter  
5 should remain stayed. On July 29, 2015, Petitioner filed a response to the order to show  
6 cause stating that his petition with the California Supreme Court was still pending.

7 Then, the Court noted that the petition had been denied by the California  
8 Supreme Court on August 12, 2015, and again ordered Petitioner to show cause why  
9 the stay should not be vacated. On September 23, 2015, Petitioner filed a 194 page  
10 response to the order to show cause. (ECF No. 13.) Despite, or perhaps because of, its  
11 unnecessary and counter-productive length, the response leaves unclear whether  
12 Petitioner is claiming the stay should remain in place or whether he is still attempting to  
13 exhaust state remedies. Regardless, among the exhibits attached to his response is a  
14 copy of the California Supreme Court's August 12, 2015 denial of his habeas corpus  
15 petition.

16 It thus appears that Petitioner has presented his claims to the highest state court.  
17 As the claims appear exhausted, they are ready for federal review. Accordingly, the  
18 Court recommends that the stay of the petition be vacated.

19 **RECOMMENDATION**

20 Accordingly, it is hereby recommended that the stay of the petition be vacated. It  
21 is further ordered that the Clerk of Court assign a District Court Judge to the instant  
22 matter.

23 This Findings and Recommendation is submitted to the assigned District Judge,  
24 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after  
25 being served with the Findings and Recommendation, any party may file written  
26 objections with the Court and serve a copy on all parties. Such a document should be  
27 captioned "Objections to Magistrate Judge's Findings and Recommendation." Any reply  
28 to the objections shall be served and filed within fourteen (14) days after service of the

1 objections. Petitioner is advised that failure to file objections within the specified time  
2 may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d  
3 834, 839 (9th Cir. 2014).

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5 IT IS SO ORDERED.

6 Dated: November 2, 2015

7 /s/ Michael J. Seng  
8 UNITED STATES MAGISTRATE JUDGE  
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