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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENITO SANCHEZ SALAS,  
Petitioner,  
v.  
NEIL MCDOWELL,  
Respondent.

No. 1:15-cv-00766-DAD-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO DENY  
PETITIONER’S MOTION TO STAY AND  
ABEY PROCEEDINGS

(Doc. Nos. 14, 15)

On November 3, 2017, petitioner, a state prisoner proceeding with retained counsel, filed a pro se motion to stay and abey these proceedings. (Doc. No. 14) The motion was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rule 302.

On December 12, 2017, the assigned magistrate judge issued findings and recommendations recommending that the motion for stay and abeyance be denied because it was filed by petitioner pro se even though he is represented by counsel. (Doc. No. 15.) However, because petitioner alleged that his counsel, attorney Fay Arfa, was no longer in communication with him, it was also recommended that the court order attorney Arfa to establish contact with petitioner and notify the court that she had done so. (Id. at 5.)

The findings and recommendations provided that petitioner could file objections within 30 days. On December 13, 2017, petitioner’s counsel of record, attorney Arfa filed objections in

1 which she contends that petitioner's motion should be "wholly rejected" because hybrid  
2 representation for petitioner has not been authorized by the court and the court therefore should  
3 not consider any motion petitioner files on his own behalf. (Doc. 16 at 4.) Respondent also filed  
4 objections noting that "there appears no valid basis to consider a 'motion' by Petitioner for stay or  
5 abeyance, for lack of presentation by counsel by whom Petitioner has chosen to be represented."  
6 (Doc. 17.)

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has reviewed the  
8 record as a whole, including both attorney Arfa's and respondent's objections to the findings and  
9 recommendations. The objections urge denial of the motion because it was not filed by  
10 petitioner's counsel of record, a position which is consistent with the findings and  
11 recommendations issued by the magistrate judge. The magistrate judge also recommended that  
12 attorney be ordered to contact petitioner and report back to the court in an abundance of caution,  
13 based on representations that petitioner had made in his pro se motion. The court finds the  
14 findings and recommendations to be supported by the factual record and proper legal analysis.

15 Accordingly it is hereby ordered that:

- 16 1. The findings and recommendations issued December 12, 2017 (Doc. No. 15) are  
17 adopted in full;
- 18 2. Petitioner's pro se motion for stay and abeyance of these proceedings (Doc. No.  
19 14) is denied;
- 20 3. Counsel for petitioner, attorney Arfa, shall establish contact with petitioner within  
21 7 days of the date of this order; and
- 22 4. Within 14 days of contacting petitioner, counsel for petitioner shall notify the court  
23 in writing as to whether the issues raised by petitioner in his pro se motion with  
24 respect to representation have been resolved.

25 IT IS SO ORDERED.

26 Dated: April 12, 2018

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28 UNITED STATES DISTRICT JUDGE