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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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12 **DARRYL DIAZ,**

13 Petitioner,

14 **v.**

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16 **JEFFERY BEARD,**

17 Respondent.
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Case No. 1:15-cv-00898 LJO MJS (HC)

**ORDER GRANTING MOTION TO LIFT
STAY; ORDER DENYING MOTION TO
STAY AS MOOT**

[Docs. 2, 9]

19 Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254. Petitioner has declined Magistrate Judge
21 jurisdiction under 28 U.S.C. § 636(c). (ECF No. 6.)

22 On June 15, 2015, Petitioner filed a motion to stay the proceedings while he
23 attempted to exhaust his state court remedies. (Mot. to Stay, ECF No. 2.)

24 On September 16, 2015, the Court issued an order to show cause why the Court
25 should grant a stay. The court noted that the California Supreme Court had denied
26 Petitioner's state petition on August 19, 2015, and it appeared that he had exhausted his
27 state remedies and that his federal petition was ready for adjudication.
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Petitioner responded by filing this motion to lift the stay. He notes that the California Supreme Court decided his state court petition, and that there was no need for a stay. Construing Petitioner's contentions in a manner favorable to Petitioner, the Court will consider the motion to lift the stay as a request to withdraw the motion to stay. In this case, the Court never granted the stay, and therefore there is no stay to lift. However, Petitioner's motion to stay, filed on June 15, 2015 remains pending.

Accordingly, the Court construes Plaintiff's motion to lift the stay as a request to withdraw the motion to stay and GRANTS the request to withdraw the motion. (ECF Nos. 1, 9.) The Court will screen the petition for writ of habeas corpus by way of a separate order.

IT IS SO ORDERED.

Dated: October 26, 2015

/s/ Michael J. Leng
UNITED STATES MAGISTRATE JUDGE