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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 LUIS CALDERON,

10 Petitioner,

11 v.

12 FREDERIC FOULKS,

13 Respondent.

Case No. 1:16-cv-00276-LJO-SAB-HC

FINDINGS AND RECOMMENDATION TO
VACATE STAY

14
15 Petitioner is a state prisoner, represented by counsel, proceeding with a petition for writ
16 of habeas corpus pursuant to 28 U.S.C. § 2254.

17 On August 16, 2016, the Court stayed the instant federal habeas proceedings pending
18 exhaustion of state remedies. (ECF No. 18). The Court ordered Petitioner to file an initial status
19 report within thirty days of the date of service of the order and every ninety days thereafter. The
20 Court also notified Petitioner that not complying with the Court's order would result in the Court
21 vacating the stay.

22 On September 29, 2016, the Court issued an order to show cause why the stay should not
23 be vacated for Petitioner's failure to file an initial status report. (ECF No. 19). Thereafter,
24 Petitioner filed an initial status report on October 6, 2016, and a subsequent status report on
25 January 18, 2017. (ECF Nos. 20, 22). On April 26, 2017, the Court issued another order to show
26 cause for Petitioner's failure to file a timely status report. (ECF No. 23). On May 10, 2017, the
27 Magistrate Judge issued findings and recommendation to vacate the stay in light of Petitioner's
28 failure to respond to the order to show cause. (ECF No. 24). On May 15, 2017, Petitioner

1 informed the Court of the status of the state court proceedings, and the findings and
2 recommendation was vacated. (ECF Nos. 25, 26).

3 As over ninety days had passed since Petitioner's last status report, the undersigned
4 issued an order for Petitioner to show cause why the stay should not be vacated. (ECF No. 27).
5 To date, Petitioner has not filed a response to the order to show cause, and the time for doing so
6 has passed. Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these
7 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
8 sanctions authorized by statute or Rule or within the inherent power of the Court." The Court
9 previously notified Petitioner that not complying with the Court's order would result in the Court
10 vacating the stay. (ECF No. 18 at 2).

11 Based on the foregoing, the undersigned HEREBY RECOMMENDS that the stay in the
12 instant proceeding be vacated.

13 This Findings and Recommendation is submitted to the assigned United States District
14 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
15 Rules of Practice for the United States District Court, Eastern District of California. Within
16 **FOURTEEN (14) days** after service of the Findings and Recommendation, Petitioner may file
17 written objections with the court and serve a copy on all parties. Such a document should be
18 captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned
19 District Judge will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
20 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
21 waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839
22 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: September 12, 2017


UNITED STATES MAGISTRATE JUDGE