1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 JOHN MICHAEL KELLY, No. 1:16-cv-01577-DAD-JLT (HC) 12 ORDER REGARDING PETITIONER'S Petitioner. MOTION TO PROCEED 13 (Doc. No. 22) v. 14 [THIRTY-DAY DEADLINE] 15 RAYMOND MADDEN, 16 Respondent. 17 18 On March 20, 2017, the Court issued Findings and Recommendation to grant 19 20 proceedings. (Doc. Nos. 14, 17, 20). This Findings and Recommendation was served upon all 21 22

Respondent's motion to dismiss for failure to exhaust and to deny Petitioner's motion for stay of parties and contained notice that any objections were to be filed within twenty-one days from the date of service of that order. On April 6, 2017, Petitioner filed objections to the Findings and Recommendations. (Doc. No. 21). After expiration of the time for filing a reply to objections, the Findings and Recommendation was submitted to the District Judge for review.

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On May 3, 2017, Petitioner filed the instant motion to proceed with the petition. He states the California Supreme Court recently issued an order denying his unexhausted claims on April 19, 2017. He claims the petition is now fully exhausted. In light of this new development, the Court will direct Respondent as follows: 1) If it is Respondent's position that the petition still

1	contains unexhausted claims, he shall submit a supplement to his motion to dismiss; or 2) If
2	Respondent concedes the petition is now exhausted, he shall move to withdraw the motion to
3	dismiss.
4	ORDER
5	Accordingly, the Court orders as follows:
6	1. Within thirty days of the date of service of this Order, Respondent is DIRECTED
7	to file either a supplement to his motion to dismiss, or a motion to withdraw his
8	motion to dismiss;
9	2. In the event Respondent files a supplement to the motion to dismiss, Petitioner
10	may file a supplement to his opposition with thirty days of the filing of
11	Respondent's supplement.
12	IT IC CO ODDEDED
13	IT IS SO ORDERED.
14	Dated: May 9, 2017 /s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE
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