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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 DALE OWEN DUSTIN,

11 Petitioner,

12 v.

13 C. PFFEIFER,

14 Respondent.

Case No. 1:16-cv-01874-DAD-EPG-HC

FINDINGS AND RECOMMENDATION TO
GRANT RESPONDENT'S MOTION TO
DISMISS AND TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS

(ECF No. 25)

15
16 Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254. As the claims raised in the instant petition are unexhausted, the
18 undersigned recommends granting Respondent's motion to dismiss and dismissing the petition.

19 **I.**

20 **DISCUSSION**

21 On October 21, 2016, Petitioner filed the instant petition for writ of habeas corpus in the
22 United States District Court for the Northern District of California. (ECF No. 1). On December
23 14, 2016, the petition was transferred to this Court. (ECF No. 8). In the petition, Petitioner
24 appears to challenge multiple prison disciplinary proceedings in addition to raising various issues
25 pertaining to Petitioner's confinement, such as being improperly transferred and not having
26 access to property. (ECF No. 1 at 2, 5).¹ On May 19, 2017, Respondent filed a motion to dismiss.
27 (ECF No. 25). Petitioner has not filed any opposition.

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 A petitioner in state custody who is proceeding with a petition for writ of habeas corpus
2 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based
3 on comity to the state court and gives the state court the initial opportunity to correct the state’s
4 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v.
5 Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by
6 providing the highest state court with a full and fair opportunity to consider each claim before
7 presenting it to the federal court. O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.
8 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971). To provide the
9 highest state court the necessary opportunity, the petitioner must “fairly present” the claim with
10 “reference to a specific federal constitutional guarantee, as well as a statement of the facts that
11 entitle the petitioner to relief.” Duncan, 513 U.S. at 365; Gray v. Netherland, 518 U.S. 152, 162–
12 63 (1996). See also Davis v. Silva, 511 F.3d 1005, 1009 (9th Cir. 2008).

13 Here, Petitioner states that he has not presented his claims to any state court. (ECF No. 1
14 at 3–4). If Petitioner has not sought relief in the California Supreme Court for the claims that he
15 raises in the instant petition, the Court cannot proceed to the merits of those claims. 28 U.S.C.
16 § 2254(b)(1). The Court must dismiss without prejudice a petition containing unexhausted claims
17 to give a petitioner an opportunity to exhaust the claims if he can do so.² See Lundy, 455 U.S. at
18 522.

19 II.

20 RECOMMENDATION

21 Accordingly, the undersigned HEREBY RECOMMENDS that:

- 22 1. Respondent’s motion to dismiss (ECF No. 25) be GRANTED; and
- 23 2. The petition for writ of habeas corpus be DISMISSED without prejudice for

24 _____
25 ² Note that the Ninth Circuit has “long held that prisoners may not challenge mere conditions of confinement in
26 habeas corpus.” Nettles v. Grounds, 830 F.3d 922, 933 (9th Cir. July 26, 2016) (en banc) (citing Crawford v. Bell,
27 599 F.2d 890, 891–92 (9th Cir. 1979)). A civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a
28 prisoner to challenge the conditions of confinement. McCarthy v. Bronson, 500 U.S. 136, 141–42 (1991); Preiser,
411 U.S. at 499. It may be that certain of Petitioner’s claims related to conditions of confinement, which would not
affect his potential release, should be brought under § 1983 rather than as a habeas petition. The Court notes that
prisoners are required to exhaust available *administrative* remedies prior to filing a § 1983 suit. 42 U.S.C.
§ 1997e(a); Jones v. Bock, 549 U.S. 199, 211 (2007).

1 nonexhaustion.

2 This Findings and Recommendation is submitted to the assigned United States District
3 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
4 Rules of Practice for the United States District Court, Eastern District of California. Within
5 **THIRTY (30) days** after service of the Findings and Recommendation, any party may file
6 written objections with the court and serve a copy on all parties. Such a document should be
7 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the
8 objections shall be served and filed within fourteen (14) days after service of the objections. The
9 assigned United States District Court Judge will then review the Magistrate Judge’s ruling
10 pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within
11 the specified time may waive the right to appeal the District Court’s order. Wilkerson v.
12 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th
13 Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: July 6, 2017

17 /s/ Eric P. Gray
18 UNITED STATES MAGISTRATE JUDGE
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