

1 B. Exhaustion

2 A petitioner who is in state custody and wishes to collaterally challenge her conviction by
3 a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).
4 The exhaustion doctrine is based on comity to the state court and gives the state court the initial
5 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501
6 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

7 A petitioner can satisfy the exhaustion requirement by providing the highest state court
8 with a full and fair opportunity to consider each claim before presenting it to the federal court.
9 Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court
10 was given a full and fair opportunity to hear a claim if the petitioner has presented the highest
11 state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney
12 v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

13 Additionally, the petitioner must have specifically told the state court that she was raising
14 a federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States
15 Supreme Court reiterated the rule as follows:

16 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state
17 remedies requires that petitioners “fairly presen[t]” federal claims to the state
18 courts in order to give the State the “opportunity to pass upon and correct alleged
19 violations of the prisoners' federal rights” (some internal quotation marks omitted).
20 If state courts are to be given the opportunity to correct alleged violations of
21 prisoners' federal rights, they must surely be alerted to the fact that the prisoners
are asserting claims under the United States Constitution. If a habeas petitioner
wishes to claim that an evidentiary ruling at a state court trial denied him the due
process of law guaranteed by the Fourteenth Amendment, he must say so, not only
in federal court, but in state court.

22 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

23 Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his
24 federal claims in state court *unless he specifically indicated to that court that those*
claims were based on federal law. See Shumway v. Payne, 223 F.3d 982, 987-88
25 (9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held
26 that the *petitioner must make the federal basis of the claim explicit either by citing*
federal law or the decisions of federal courts, even if the federal basis is “self-
evident,” Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.
27 Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be decided under
28 state law on the same considerations that would control resolution of the claim on
federal grounds. Hiiivala v. Wood, 195 F.3d 1098, 1106-07 (9th Cir. 1999);
Johnson v. Zenon, 88 F.3d 828, 830-31 (9th Cir. 1996);

1 In Johnson, we explained that the petitioner must alert the state court to the fact
2 that the relevant claim is a federal one without regard to how similar the state and
3 federal standards for reviewing the claim may be or how obvious the violation of
federal law is.

4 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added), *as amended by Lyons*
5 *v. Crawford*, 247 F.3d 904, 904-5 (9th Cir. 2001).

6 From the petition, it appears that Petitioner has not presented her claims to the California
7 Supreme Court as required by the exhaustion doctrine. That being the case, the Court must
8 dismiss the petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v. Rice,
9 276 F.3d 478, 481 (9th Cir. 2001). The Court cannot consider a petition that is entirely
10 unexhausted. Rose v. Lundy, 455 U.S. 509, 521-22 (1982).

11 **ORDER**

12 The Clerk of Court is DIRECTED to assign a District Judge to the case.

13 **RECOMMENDATION**

14 Accordingly, the Court RECOMMENDS that the habeas corpus petition be DISMISSED
15 WITHOUT PREJUDICE for lack of exhaustion.

16 This Findings and Recommendation is submitted to the United States District Court Judge
17 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304
18 of the Local Rules of Practice for the United States District Court, Eastern District of California.
19 Within twenty-one days after being served with a copy, Petitioner may file written objections
20 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings
21 and Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28
22 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to
23 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 Dated: March 1, 2017

26 /s/ Jennifer L. Thurston
27 UNITED STATES MAGISTRATE JUDGE