



1 either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an  
2 answer to the petition has been filed.

3 B. Exhaustion

4 A petitioner who is in state custody and wishes to collaterally challenge his conviction by a  
5 petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The  
6 exhaustion doctrine is based on comity to the state court and gives the state court the initial  
7 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S.  
8 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

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

15 Petitioner indicates that review in the Court of Appeals and California Supreme Court are  
16 pending.<sup>1</sup> (See Doc. 1 at 5-6.) Because it appears Petitioner's appeals are still pending, the petition is  
17 premature, and the Court must dismiss the petition. See Raspberry v. Garcia, 448 F.3d 1150, 1154  
18 (9th Cir. 2006); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001); Calderon v. United States Dist.  
19 Court, 107 F.3d 756, 760 (9th Cir. 1997) (en banc); Greenawalt v. Stewart, 105 F.3d 1268, 1273 (9th  
20 Cir. 1997). The Court cannot consider a petition that is entirely unexhausted. Rose, 455 U.S. at 521-  
21 22; Calderon, 107 F.3d at 760. Therefore, the petition must be dismissed for lack of exhaustion.

22 **ORDER**

23 The Court DIRECTS the Clerk of Court to assign a district judge to the case.

24 **RECOMMENDATION**

25 Accordingly, the Court RECOMMENDS that the habeas corpus petition be SUMMARILY  
26

27 \_\_\_\_\_  
28 <sup>1</sup> It appears Petitioner has also sought relief in the California Supreme Court in various habeas corpus matters. The Court may take judicial notice of sources whose accuracy cannot be reasonably disputed (Fed.R.Evid. 201(b)(2)). Thus, the Court takes judicial notice of the on-line docket of the California Supreme Court.

1 DISMISSED without prejudice for lack of jurisdiction.

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

10  
11 IT IS SO ORDERED.

12 Dated: October 15, 2020

/s/ Jennifer L. Thurston  
13 UNITED STATES MAGISTRATE JUDGE