

1 opportunity to challenge the stay by objecting to the [January 2013] Findings and
2 Recommendations” and “did not do so.” F&R at 4:14-17. Respondent asserts that his motion is
3 now timely, because the stay “was initially lawful but became unlawful when it became clear that
4 it was indefinite[.]” Obj. at 4:2.

5 Respondent’s argument fails because he cited no authority to support this theory that a
6 stay that is “lawful” when issued can “transform[] into” an unlawful stay, or that a stay that is not
7 an abuse of discretion can become “a clear abuse of discretion” at a later date. See Obj. at 2:14-
8 15, 3:26. Respondent’s argument relies on Rhines v. Weber, 544 U.S. 269 (2005) for the
9 proposition that an indefinite stay constitutes an abuse of discretion. See Obj. at 2-3. Rhines
10 indeed established the standard for issuing a stay to allow a petitioner to exhaust unexhausted
11 claims in a “mixed” petition. See 544 U.S. at 277-78. But the case says nothing about whether or
12 when a court abuses its discretion by failing to alter a stay that it previously issued. Respondent
13 concedes that the stay was lawful as issued in 2013 and he cites no authority under which a court
14 could find that the same stay has become unlawful two years later. The Court therefore overrules
15 Respondent’s first objection.

16 Respondent’s second contention is that the magistrate judge erred by “impos[ing] the
17 burden of show [sic] lack of merit on Respondent[.]” Obj. at 5:17. Respondent’s brief then
18 launches into a lengthy discussion of the merits, apparently in response to the magistrate judge’s
19 observation that his motion provided no basis or argument for the proposition that the claims are
20 meritless. See F&R at 5; Obj. at 5-20. The Court overrules this objection and disregards the
21 merits discussion, because whoever bears the burden of proving that the claims have or lack
22 merit, the issue does not bear on the outcome of this motion to dismiss. Indeed, Respondent
23 wishes the Court to consider the merits as part of the Rhines inquiry. See Obj. at 5. But as
24 discussed above, Respondent has provided no legal basis for applying Rhines to this two-year-old
25 stay. The Court therefore rejects Respondent’s second argument.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations filed December 3, 2014 are adopted in full; and
3 2. Respondent's motion to dismiss (ECF No. 942) is DENIED.

4 DATED: March 18, 2015

5 /s/ John A. Mendez

6 UNITED STATES DISTRICT COURT JUDGE

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