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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CRAIG ANDERSON,

Petitioner,

No. CIV S-08-1751 FCD KJM P

vs.

D.K. SISTO,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus under 28 U.S.C. § 2254. Respondent has filed a motion to dismiss for petitioner’s failure to exhaust state court remedies. See docket no. 15. In opposition, petitioner conceded that he had failed to file a petition before the California Supreme Court, a prerequisite to this court’s review of his petition under § 2254. See Opposition, docket no. 16. Petitioner requested that the court hold this case in abeyance instead of dismissing it for failure to exhaust. Id. Before the court decided whether to dismiss or hold this case in abeyance, however, the petitioner submitted proof that his application before the California Supreme Court had been denied. See docket no. 17. Therefore the motion to dismiss for failure to exhaust state court

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1 remedies should be denied as moot and respondent ordered to file an answer to the petition  
2 within sixty days of the entry of the court's order.

3 Accordingly, IT IS HEREBY ORDERED that the "motion that the court take this  
4 case out of abeyance" (docket no. 17) is denied as moot.

5 IT IS HEREBY RECOMMENDED that the motion to dismiss (docket no. 15) be  
6 denied as moot and respondent ordered to submit an answer to the petition within sixty days of  
7 any entry of the court's order denying the motion to dismiss.

8 These findings and recommendations are submitted to the United States District  
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
10 days after being served with these findings and recommendations, petitioner may file written  
11 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
12 Findings and Recommendations." Petitioner is advised that failure to file objections within the  
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
14 F.2d 1153 (9th Cir. 1991).

15 DATED: October 22, 2009.

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18 U.S. MAGISTRATE JUDGE

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20 ande1751.mot.dismiss