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

AOUS JARRAR,

Petitioner,

No. CIV S-09-1684 FCD GGH P

vs.

RONALD BARNES,

Respondent.

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding with counsel for a writ of habeas corpus. The petition raises one claim of ineffective assistance of counsel that was unexhausted. On July 9, 2009, petitioner filed a motion to stay the petition in order to properly exhaust the claim. On September 8, 2009, the district judge adopted the findings and recommendations denying the motion to stay.

Because the petition consisted of only one unexhausted claim, it is subject to dismissal without prejudice. See Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir.2006) (“Once a district court determines that a habeas petition contains only unexhausted claims, ... it may simply dismiss the habeas petition for failure to exhaust.”); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir.2001).

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1 Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of
2 habeas corpus be dismissed without prejudice.

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

10 DATED: October 30, 2009

/s/ Gregory G. Hollows

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12 _____
13 GREGORY G. HOLLOWES
14 UNITED STATES MAGISTRATE JUDGE

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