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

TIMOTHY STAYER,

Petitioner,

No. CIV S-09-2588 MCE GGH P

vs.

M. McDONALD, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the undersigned is petitioner’s unopposed January 21, 2010, motion to stay pending exhaustion of an unexhausted claim. For the following reasons, petitioner’s motion should be granted.

Petitioner seeks to stay this action pursuant to the procedures set forth in King v. Ryan, 564 F.3d 1133, 1135 (9th Cir. 2009). Petitioner has filed an amended petition containing only his exhausted claims. In the motion to stay, petitioner alleges that his amended petition was timely. Petitioner alleges that he seeks to add his currently unexhausted claim within the limitations period, after the claim is exhausted, because the limitations period is tolled while petitioner’s state habeas is pending. Petitioner, through counsel, has calculated the number of days in which the soon-to-be exhausted claim must be filed in federal court after the ruling of the

1 state supreme court. Petitioner's unopposed motion should be granted.¹

2 Accordingly, IT IS HEREBY RECOMMENDED that petitioner's January 21,
3 2010, motion to stay (no. 24) be granted and this action be administratively stayed.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
6 days after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
9 shall be served and filed within ten days after service of the objections. The parties are advised
10 that failure to file objections within the specified time may waive the right to appeal the District
11 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: March 5, 2010

13 /s/ Gregory G. Hollows

14 UNITED STATES MAGISTRATE JUDGE

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25 ¹ In an apparent abundance of caution, petitioner's motion also argues that this action
26 should be stayed pursuant to Rhines v. Weber, 544 U.S. 269 (2005). The undersigned need not
reach this argument because petitioner prefers the Kelly/King stay, and such is appropriate under
King v. Ryan, supra.