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

BRIAN SUM,

Petitioner,

2: 09 - cv - 2811 - WBS TJB

vs.

KEN CLARK, Warden

Respondent.

ORDER

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Petitioner is a state prisoner and has filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 24, 2011, Magistrate Judge Bommer issued findings and recommendations recommended that Petitioner’s motion for stay and abeyance be denied and that to the extent Claim II included a federal Double Jeopardy argument that it be dismissed as unexhausted. Petitioner filed objections to the findings and recommendations on September 14, 2011. Respondent filed a reply to the objections on September 21, 2011.


In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the entire file including the objections, the court finds the August 24, 2011 findings and recommendations to

1 be supported by the record and by proper analysis.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The findings and recommendations filed August 24, 2011 is adopted in full; and
- 4 2. Petitioner's motion to stay and abey (Dkt. No. 32) is DENIED and to the extent  
5 that Claim II includes a federal double jeopardy claim it is deemed unexhausted  
6 and is stricken.

7 DATED: September 27, 2011

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9 WILLIAM B. SHUBB  
10 UNITED STATES DISTRICT JUDGE  
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