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

FRANCISCO MORALES,

Petitioner,

No. CIV-S-10-3139 KJM P

vs.

CALIFORNIA SUPREME COURT,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_/

Petitioner, a state prisoner proceeding pro se, has filed a copy of a petition for writ of habeas corpus that he recently filed in the California Supreme Court. It appears petitioner intends to raise the claims presented to the California Supreme Court to this court by way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because petitioner has not exhausted state court remedies with respect to his claims, petitioner requests that consideration of his § 2254 petition be stayed.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1986). Because petitioner has not exhausted

1 state court remedies with respect to any of his claims, this action should be dismissed without  
2 prejudice. The court should also deny the request for a stay because the court cannot stay an  
3 action if there are no claims where state court remedies have been exhausted. Raspberry v.  
4 Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006).

5 Petitioner has requested leave to proceed in forma pauperis in this action.  
6 Petitioner has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).  
7 Accordingly, the request to proceed in forma pauperis will be granted.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Petitioner is granted leave to proceed in forma pauperis; and  
10 2. The Clerk of the Court is directed to assign a district court judge to this case.

11 IT IS HEREBY RECOMMENDED that:

- 12 1. Petitioner's request for a stay be denied; and  
13 2. This action be dismissed.

14 These findings and recommendations will be submitted to the United States  
15 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
16 twenty-one days after being served with these findings and recommendations, petitioner may file  
17 written objections with the court. The document should be captioned "Objections to Findings  
18 and Recommendations." Petitioner is advised that failure to file objections within the specified  
19 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
20 (9th Cir. 1991).

21 DATED: November 30, 2010.

22   
23 U.S. MAGISTRATE JUDGE

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