

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

LUPE JAMES SANCHEZ,

Petitioner,

No. 2:11-cv-2204 JAM EFB P

vs.

WILLIAM KNIPP, et al.,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed an application for a 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 3, 2012, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. The findings and recommendations filed August 3, 2012, are adopted in full;

2. Respondents' October 21, 2011 motion to dismiss, Dckt. No. 8, is granted in part, and claims two, three, five, six, seven, and eight are dismissed without prejudice;

3. Petitioner's December 27, 2011 motion for stay, Dckt. No. 12, is granted in that the unexhausted claims in the original petition (claims two, three, five, six, seven, and eight) are stricken pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002) and *King v. Ryan*, 564 F.3d 1133 (9th Cir. 2009), and the instant action, with only claims one and four remaining, is administratively stayed pursuant to *Kelly* and *King*;

4. Petitioner is directed to file a state habeas petition containing his unexhausted claims within 30 days; and

5. Petitioner is directed to file a motion to lift the stay within 30 days of the California Supreme Court issuing a final order resolving petitioner's unexhausted claims.

DATED: October 10, 2012

/s/ John A. Mendez
UNITED STATES DISTRICT COURT JUDGE