

1 corpus filed in the San Joaquin Superior Court and received a response from the clerk of that
2 court indicating that his petition for writ of habeas corpus had been denied back on October 29,
3 2014. Petitioner also has informed this court that the clerk of the San Joaquin Superior Court had
4 his correct address but did not have his correct CDC number. (Doc. No. 35)

5 Notwithstanding the claimed confusion regarding petitioner's CDC number in the San
6 Joaquin Superior Court, the undersigned finds once again that petitioner has unreasonably
7 delayed in his efforts to exhaust his unexhausted claims in state court. See Kelly v. Small, 315
8 F.3d 1063, 1071 (9th Cir. 2003) (indicating reasonable time limits would allow petitioner 30 days
9 to file a petition in state court and 30 days to return to federal court after final rejection of claims
10 by state court), overruled on other grounds by Robbins v. Carey, 481 F.3d 1143, 1148-49 (9th
11 Cir. 2007). This court originally stayed this federal habeas action back in 2012 to allow petitioner
12 the opportunity to exhaust his unexhausted claims. Until recently, petitioner unduly delayed in
13 inquiring and learning about the status of his exhaustion petition filed in the San Joaquin Superior
14 Court. Moreover, although this federal habeas action has been stayed for almost three years,
15 petitioner has yet to file an exhaustion petition with the California Supreme Court. Again, the
16 undersigned concludes that it would be an abuse of this court's discretion to further stay these
17 proceedings.

18 Accordingly, the court will recommend that petitioner's second motion to re-instate the
19 stay of this action be denied and that this action proceed only on petitioner's already exhausted
20 claims.¹

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22 ¹ Shortly after filing his second motion to re-instate the stay of this action, petitioner filed a
23 motion for an extension of time and a request for a copy of his original petition for writ of habeas
24 corpus. In his motion, petitioner requests that the court re-instate the stay of this action or grant
25 him an extension of time, presumably to file a traverse in this action. As noted above, the
26 undersigned will recommend that petitioner's second motion to re-instate the stay of this action
27 be denied. In addition, however, the court will recommend that petitioner be granted sixty days
28 from the date of any order adopting these findings and recommendations to file a traverse with
this court. Finally, the court will direct the Clerk of the Court to provide petitioner with a
courtesy copy of his original petition for writ of habeas corpus. Petitioner is reminded that his
original petition, filed November 7, 2011, was deemed amended by the deletion of Grounds A, E,
F, G, and H, all of which are unexhausted. (Doc. No. 23.) No further courtesy copies will be
provided to petitioner in the future.

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CONCLUSION

IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to send petitioner a courtesy copy of his original petition for writ of habeas corpus.

IT IS HEREBY RECOMMENDED that:

- 1. Petitioner’s motion to re-instate the stay of this action (Doc. No. 35) be denied; and
- 2. Petitioner’s motion for an extension of time to file a traverse (Doc. No. 36) be granted, and petitioner be directed to file a traverse in support of his exhausted claims within sixty days of any order adopting these findings and recommendations.

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

Dated: October 16, 2015



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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