UNITED STATES DISTRICT COURT	
FOR THE EASTERN	DISTRICT OF CALIFORNIA
DANIEL NAGY,	No. 2:11-cv-2948 WBS DAD P
Petitioner,	
v.	ORDER AND
D. DAVEY, et al.,	FINDINGS AND RECOMMENDATIONS
Respondents.	
Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas	
corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner's second motion to	
re-instate the stay of this action.	
On July 29, 2015, the undersigned iss	ued findings and recommendations, recommending
that petitioner's first motion to re-instate the	stay of this action be denied because petitioner had
unreasonably delayed in his pursuit of exhaus	sting his unexhausted claims in state court, and it
would be an abuse of discretion to further sta	y these proceedings. (Doc. No. 32) On September
2, 2015, the assigned district judge adopted the	nose findings and recommendations in full and
ordered petitioner to file a traverse, if any, in	support of his exhausted claims within thirty days.
(Doc. No. 34)	
On September 14, 2015, petitioner file	ed a second motion to re-instate the stay of this
action. He explains that he recently inquired	about the status of his petition for writ of habeas
	FOR THE EASTERN DANIEL NAGY, V. D. DAVEY, et al., Respondents. Petitioner is a state prisoner proceedin corpus pursuant to 28 U.S.C. § 2254. Pendin re-instate the stay of this action. On July 29, 2015, the undersigned iss that petitioner's first motion to re-instate the unreasonably delayed in his pursuit of exhaus would be an abuse of discretion to further stat 2, 2015, the assigned district judge adopted the ordered petitioner to file a traverse, if any, in (Doc. No. 34) On September 14, 2015, petitioner file

corpus filed in the San Joaquin Superior Court and received a response from the clerk of that
court indicating that his petition for writ of habeas corpus had been denied back on October 29,
2014. Petitioner also has informed this court that the clerk of the San Joaquin Superior Court had
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.

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

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Shortly after filing his second motion to re-instate the stay of this action, petitioner filed a 22 motion for an extension of time and a request for a copy of his original petition for writ of habeas corpus. In his motion, petitioner requests that the court re-instate the stay of this action or grant 23 him an extension of time, presumably to file a traverse in this action. As noted above, the 24 undersigned will recommend that petitioner's second motion to re-instate the stay of this action be denied. In addition, however, the court will recommend that petitioner be granted sixty days 25 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 26 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, 27 F, G, and H, all of which are unexhausted. (Doc. No. 23.) No further courtesy copies will be 28 provided to petitioner in the future.

1	CONCLUSION
2	IT IS HEREBY ORDERED that:
3	1. The Clerk of the Court is directed to send petitioner a courtesy copy of his original
4	petition for writ of habeas corpus.
5	IT IS HEREBY RECOMMENDED that:
6	1. Petitioner's motion to re-instate the stay of this action (Doc. No. 35) be denied; and
7	2. Petitioner's motion for an extension of time to file a traverse (Doc. No. 36) be granted,
8	and petitioner be directed to file a traverse in support of his exhausted claims within sixty days of
9	any order adopting these findings and recommendations.
10	These findings and recommendations are submitted to the United States District Judge
11	assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days
12	after being served with these findings and recommendations, any party may file written
13	objections with the court and serve a copy on all parties. Such a document should be captioned
14	"Objections to Magistrate Judge's Findings and Recommendations." Any response to the
15	objections shall be filed and served within fourteen days after service of the objections. The
16	parties are advised that failure to file objections within the specified time may waive the right to
17	appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
18	Dated: October 16, 2015
19	Dale A. Dage
20	DALE A. DROZD
21	UNITED STATES MAGISTRATE JUDGE
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