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

MARCOS AVALOS,

Petitioner,

No. 2:12-cv-0052 LKK JFM (HC)

vs.

GREGG LEWIS, Warden,

Respondent.

FINDINGS & RECOMMENDATIONS

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Petitioner is a state prisoner proceeding pro se and in forma pauperis with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 19, 2012, respondent filed a motion to dismiss. Respondent contends that the petition before the court is a mixed petition containing both exhausted and unexhausted claims. On June 4, 2012, petitioner filed a document styled as an opposition to the motion to dismiss. Therein, petitioner requests that this action be stayed and held in abeyance pending exhaustion of unexhausted claims or, in the alternative, that petitioner be granted leave to amend the petition to proceed with the exhausted claims.

By order filed June 28, 2012, respondent was directed to file and serve within fourteen days a response to petitioner’s request for stay and abeyance. On July 10, 2012, respondent filed a statement of non-opposition to the request. Therein, respondent requests that

1 petitioner be directed to present his claims to the state court within thirty days of issuance of the
2 stay and to file a motion to lift the stay within thirty days of any final decision by the California
3 Supreme Court on the unexhausted claims.

4 Good cause appearing, IT IS HEREBY RECOMMENDED that:

5 1. Petitioner’s June 4, 2012 motion for stay and abeyance be granted;

6 2. This action be stayed pending exhaustion of state court remedies as to
7 petitioner’s unexhausted claims;

8 3. Petitioner be directed to present his claims to the state court within thirty days
9 of any order by the district court adopting these findings and recommendations;

10 4. Petitioner be directed to file a motion to lift the stay within thirty days of any
11 final decision by the California Supreme Court on the unexhausted claims;

12 5. Respondent’s March 19, 2012 motion to dismiss be denied without prejudice;
13 and

14 6. The Clerk of the Court be directed to administratively close this action.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
17 days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
20 objections shall be filed and served within fourteen days after service of the objections. The

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1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: August 1, 2012.

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6 UNITED STATES MAGISTRATE JUDGE

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8 aval0052.stay

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