

1 COVID-19 virus. (See ECF Nos. 187, 189.) Respondent again argues primarily that recent Ninth
2 Circuit case law prevents the court from granting equitable tolling prospectively. (See ECF No.
3 188.)

4 There have been two significant changes since petitioner made his last motion. First,
5 there has been an uptick in COVID-19 cases in California in the past month. Particularly relevant
6 to this case is the significant increase in virus cases in Shasta County where, according to
7 petitioner, most of the witnesses to be interviewed reside. In fact, on November 4, Shasta
8 County's virus cases were sufficiently widespread that the state imposed the highest level of
9 restrictions on that county. See <https://covid19.ca.gov/safer-economy/#county-status>.

10 The second change is that it appears judges in the Eastern District of California to
11 consider the issue in the last several months have held that anticipatory equitable tolling remains
12 appropriate. See McWhorter v. Davis, No. 1:20-cv-0215 DAD, 2020 WL 5942354 (E.D. Cal.
13 Oct. 7, 2020); Contreras v. Davis, No. 1:19-cv-1523 AWI SAB, 2020 WL 5588589 (E.D. Cal.
14 Sep. 18, 2020), rep. and reco. adopted, 2020 WL 6261619 (E.D. Cal. Oct. 23, 2020); Brown v.
15 Davis, No. 1:19-CV-01796-DAD, 2020 WL 5069654 (E.D. Cal. Aug. 27, 2020); Cowan v. Davis,
16 No. 1:19-cv-0745-DAD, 2020 WL 4698968 (E.D. Cal. Aug. 13, 2020).

17 Because the reasons for granting petitioner's motion are even stronger than they were in
18 August when this court issued its prior findings and recommendations, and because there are no
19 arguments from the parties that change this court's prior analyses, this court adopts the analyses
20 of the equitable tolling and stay issues set out in the August 28 findings and recommendations.

21 For the foregoing reasons, IT IS HEREBY RECOMMENDED that petitioner's motion to
22 stay these proceedings and equitably toll the statute of limitations (ECF No. 187) be granted as
23 follows:

- 24 1. These proceedings be stayed through March 1, 2021; and
- 25 2. Petitioner be entitled to equitable tolling of the statute of limitations for the period from
26 March 11, 2020 through March 1, 2021.

27 These findings and recommendations will be submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. The document should be captioned
3 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the
4 objections shall be filed and served within seven days after service of the objections. The parties
5 are advised that failure to file objections within the specified time may result in waiver of the
6 right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 DATED: November 18, 2020

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/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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