

1 A district court may not grant a petition for a writ of habeas corpus unless “the applicant
2 has exhausted the remedies available in the courts of the State,” or unless there is no State
3 corrective process or “circumstances exist that render such process ineffective to protect the rights
4 of the applicant.” 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by
5 presenting the “substance of his federal habeas corpus claim” to the state courts. *Picard v.*
6 *Connor*, 404 U.S. 270, 278 (1971) (no exhaustion where the petitioner presented operative facts
7 but not legal theory to state courts); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995) (to
8 exhaust a claim, a state court “must surely be alerted to the fact that the prisoners are asserting
9 claims under the United States Constitution”). For a California prisoner to exhaust, he must
10 present his claims to the California Supreme Court on appeal in a petition for review or on post-
11 conviction in a petition for a writ of habeas corpus. *See Carey v. Saffold*, 536 U.S. 223, 239-40
12 (2002) (describing California’s habeas corpus procedure); *Gatlin v. Madding*, 189 F.3d 882, 888
13 (9th Cir. 1999) (to exhaust, prisoner must present claims on appeal to California Supreme Court
14 in a petition for review). Unless the respondent specifically consents to the court entertaining
15 unexhausted claims, a petition containing such claims must be dismissed. *See* 28 U.S.C.
16 § 2254(b)(3); *Picard*, 404 U.S. at 275.

17 There is no indication on the habeas form that petitioner challenged the Shasta County
18 Superior Court convictions and sentence in the California Supreme Court. Petitioner alleges that
19 he filed a direct appeal with the California Court of Appeal, Third Appellate District, which was
20 denied on December 3, 2013.² ECF No. 1 at 2. However, petitioner left his form habeas petition
21 blank in response to the question therein as to whether he “sought further review of the decision
22 on appeal by a higher state court.” *Id.* Thus, the petition suggests that petitioner did not seek
23 review of any of his claims in the California Supreme Court.³ Indeed, there is no indication on

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25 ² Petitioner also alleges that he filed a habeas petition in the Shasta County Superior
26 Court, which was denied on March 13, 2013. ECF No. 2 at 2-3. He does not claim to have filed
any additional state court petitions for relief. *See id.*

27 ³ At a minimum, at least two of the claims were never presented to the California Supreme
28 Court. *See* ECF No. 1, § 13 (alleging that two of his claims “were not previously presented in
any other court because [his] appellate attorney didn’t think they had any merit”).

1 the California Supreme Court's docket that petitioner has sought review of his judgment of
2 conviction in that court.⁴ Petitioner does not allege that state court remedies are no longer
3 available to him. In order to proceed, petitioner must show cause for his apparent failure to
4 exhaust or obtain from the respondent an express waiver of the exhaustion requirement.

5 Accordingly, it is ORDERED that:

6 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 2) is granted
7 subject to the provision below; and

8 2. Within thirty days from this order, petitioner shall show cause for his apparent failure
9 to exhaust state remedies with respect to the claims contained in his December 16, 2013 petition
10 or obtain from the respondent an express waiver of the exhaustion requirement. Petitioner's
11 failure to comply with this order will result in a recommendation that this action be dismissed for
12 failure to exhaust state remedies.

13 Dated: February 4, 2014.



14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
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28 ⁴ A court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*,
803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).