



1 waived explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).<sup>1</sup> Accordingly, a waiver of  
2 exhaustion may not be implied or inferred. A petitioner satisfies the exhaustion requirement by  
3 providing the highest state court with a full and fair opportunity to consider all claims before  
4 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.  
5 Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

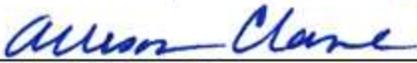
6 The petition will be dismissed with leave to amend, within thirty days, using the  
7 appropriate habeas form for this district. Petitioner's application to proceed in forma pauperis  
8 will also be dismissed but petitioner will be permitted to file a new application, again using the  
9 appropriate form for this district, or he may pay the \$5.00 filing fee, within thirty days.

10 In accordance with the above, IT IS HEREBY ORDERED that:

11 1. The deficient petition and application to proceed in forma pauperis are dismissed with  
12 leave to amend within thirty days, using the forms appropriate for this district. Petitioner must  
13 file a new § 2254 petition and either a new application to proceed in forma pauperis or the \$5.00  
14 filing fee. Petitioner's failure to comply with this order will result in a recommendation that this  
15 matter be dismissed; and

16 3. The Clerk of the Court is directed to send petitioner this court's form for filing a  
17 petition for writ of habeas corpus, and the application to proceed in forma pauperis by a prisoner.

18 DATED: March 12, 2014

19   
20 ALLISON CLAIRE  
21 UNITED STATES MAGISTRATE JUDGE

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28 <sup>1</sup> A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).