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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	NEANO MITCHELL,	No. 2:14-cv-1438 GGH P
12	Petitioner,	ORDER and
13	v.	FINDINGS AND RECOMMENDATIONS
14	JOHN SOTO,	
15	Respondent.	
16		
17	Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas	
18	corpus pursuant to 28 U.S.C. § 2254.	
19	The exhaustion of state court remedies is a prerequisite to the granting of a petition for	
20	writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived	
21	explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3). A waiver of exhaustion, thus, may	
22	not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the	
23	highest state court with a full and fair opportunity to consider all claims before presenting them to	
24	the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d	
25	1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).	
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27	1 A motition may be denied on the menite with	sout ashaustion of state count remadies 20 H.C.C. 8
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).	
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1	After reviewing the petition for habeas corpus, the court finds that petitioner has failed to		
2	exhaust state court remedies. The claims have not been presented to the California Supreme		
3	Court. Further, there is no allegation that state court remedies are no longer available to		
4	petitioner. Accordingly, the petition should be dismissed without prejudice. <sup>2</sup>		
5	Good cause appearing, IT IS HEREBY ORDERED that:		
6	1. The Clerk shall assign a district judge to this case as petitioner has not filed a consent		
7	to the undersigned presiding pursuant to 28 U.S.C. § 636(c);		
8	2. The Clerk of the Court is directed to serve a copy of these findings and		
9	recommendations together with a copy of the petition filed in the instant case on the Attorney		
10	General of the State of California; and		
11	IT IS HEREBY RECOMMENDED that petitioner's application for a writ of habeas		
12	corpus be dismissed for failure to exhaust state remedies.		
13	These findings and recommendations will be submitted to the United States District Judge		
14	assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days		
15	after being served with these findings and recommendations, petitioner may file written		
16	objections with the court. The document should be captioned "Objections to Findings and		
17	Recommendations." Petitioner is advised that failure to file objections within the specified		
18	time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153		
19	(9th Cir. 1991).		
20	Dated: July 17, 2014		
21	/s/ Gregory G. Hollows		
22	UNITED STATES MAGISTRATE JUDGE		
23	GGH:076/Mitch1438.103		
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25	Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations		
26	for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will start to run on the date on which the state court judgment became final by the conclusion of		
27	direct review or the expiration of time for seeking direct review, although the statute of limitations is tolled while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C. § 2244(d).		
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