1 2 3 UNITED STATES DISTRICT COURT 4 FOR THE EASTERN DISTRICT OF CALIFORNIA 5 6 ROY JONES, No. 2:14-cv-2823 GGH P 7 Petitioner, 8 ORDER AND FINDINGS AND v. **RECOMMENDATIONS** 9 PEOPLE OF THE STATE OF CALIFORNIA, 10 Respondents. 11 12 Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas 13 corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis 14 pursuant to 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing 15 required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 16 28 U.S.C. § 1915(a). 17 The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived 18 19 explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3). A waiver of exhaustion, thus, may 20 not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the 21 highest state court with a full and fair opportunity to consider all claims before presenting them to 22 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 23 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986). 24 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to exhaust state court remedies. The claims have not been presented to the California Supreme 25 26 Court. Further, there is no allegation that state court remedies are no longer available to 27 ¹ A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 28 2254(b)(2).

1	petitioner. Accordingly, the petition should be dismissed without prejudice. ²
2	Good cause appearing, IT IS HEREBY ORDERED that:
3	1. Petitioner is granted leave to proceed in forma pauperis;
4	2. The Clerk shall assign a district judge to this case as petitioner has not filed a consent
5	to the undersigned presiding pursuant to 28 U.S.C. § 636(c);
6	3. The Clerk of the Court is directed to serve a copy of these findings and
7	recommendations together with a copy of the petition filed in the instant case on the Attorney
8	General of the State of California; and
9	IT IS HEREBY RECOMMENDED that petitioner's application for a writ of habeas
10	corpus be dismissed for failure to exhaust state remedies.
11	These findings and recommendations will be submitted to the United States District Judge
12	assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days
13	after being served with these findings and recommendations, petitioner may file written
14	objections with the court. The document should be captioned "Objections to Findings and
15	Recommendations." Petitioner is advised that failure to file objections within the specified
16	time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
17	(9th Cir. 1991).
18	Dated: January 7, 2015
19	/s/ Gregory G. Hollows UNITED STATES MAGISTRATE JUDGE
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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
28	limitations is tolled while a properly filed application for state post-conviction or other collateral review is pending 28 U.S.C. & 2244(d)