UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BRAD ROBERT MILLER,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

No. 2:15-cv-1365 JAM CKD P

ORDER

Petitioner, a state prisoner proceeding pro se, commenced this action pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 18, 2016, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed March 18, 2016 are adopted in full;

2. Petitioner's motion for stay (ECF No. 22) is granted as follows:

a. The amended petition (ECF No. 18) is dismissed as "mixed";

b. No later than thirty days after dismissal, petitioner shall file a second amended petition containing only exhausted claims (Claims 2 and 3);

c. Failure to timely file such an amended petition will result in this action being closed; and

d. Upon receipt of a fully exhausted second amended petition, that court will administratively stay this action pursuant to Kelly, pending exhaustion of Claim 1 in the California Supreme Court.

3. Respondent's motion to dismiss (ECF No. 21) is granted as consistent with the above;

4. Petitioner's motion to amend traverse (ECF No. 25) is denied as inconsistent with this order; and

5. This action is referred back to the Magistrate Judge for further proceedings, including review of the proposed Second Amended Petition (ECF No. 28).

DATED: May 20, 2016

/s/ John A. Mendez

United States District Court Judge

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