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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

TIMOTHY C. GRIFFIN,

No. 2:15-cv-1776-MCE-CMK-P

Petitioner,

vs.

ORDER

S. PERRY,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s motion for a stay of these proceedings (Doc. 24). Petitioner argues that the relevant issue in the respondent’s motion to dismiss is currently certified by the Ninth Circuit to the California Supreme Court. This issue relates to amount of time between filing state petitions that is reasonable in order to qualify for a so called “gap tolling.” Petitioner argues until the California Supreme Court answers the question, this court should not proceed on the motion to dismiss.

However, this court is bound by the decisions of the Ninth Circuit. Until such time as the Ninth Circuit rules otherwise, the discussion set forth in the findings and recommendations remain the current law. If the findings and recommendations are adopted, and

1 petitioner's petition is dismissed, plaintiff may chose to pursue an appeal of the issue. In the
2 meantime, the undersigned finds no good cause to issue a stay in these proceedings.

3 Accordingly, IT IS HEREBY ORDERED that petitioner's motion to stay (Doc.
4 24) is denied.

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6 DATED: September 18, 2017

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8 **CRAIG M. KELLISON**
9 UNITED STATES MAGISTRATE JUDGE
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