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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID M. DAVIS,

 Petitioner,

 v.

M. ELIOT SPEARMAN,

 Respondent.

No. 2:16-cv-0733-JAM-EFB P

ORDER

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus 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 February 16, 2017, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties 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. On March 6, 2017, petitioner filed his first amended petition.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed February 16, 2017, are adopted in full.

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2. Respondent's June 10, 2016 motion to dismiss (ECF No. 15) is granted on exhaustion grounds and the petition is dismissed without prejudice and with leave to amend.

3. Petitioner is granted leave to either (a) file an amended petition containing only the three claims that he has exhausted or (b) file a motion to stay pursuant to Rhines, 544 U.S. at 277. If petitioner does not file an amended petition or a motion to stay, the court will deem the March 6, 2017 amended petition as the operative petition in this case.

DATED: March 29, 2017

/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE