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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY LEE KING,  
  
                                Petitioner,  
  
                v.  
  
DAVE DAVEY,  
  
                                Respondent.

No. 2:16-cv-1464-WBS-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding without counsel in an action brought under 28 U.S.C. § 2254. On August 30, 2017, the court denied his motion to stay these proceedings and dismissed his amended petition with leave to amend to allow him the opportunity to file a fully exhausted petition and then seek a stay under *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002). ECF No. 52. Because petitioner had filed a second amended petition during the period between the magistrate judge’s findings and recommendations and the order adopting those recommendations, the court directed respondent to file and serve a response. *Id.* Respondent has filed an answer to the second amended petition. ECF No. 58.

Petitioner again seeks a stay. ECF No. 55. However, in his motion petitioner indicates that he has now completed exhaustion on all claims in the state courts. *Id.* at 2. A stay is therefore unnecessary. A stay simply halts a federal case while a petitioner exhausts his claims in the state court. Here, petitioner wishes to add the newly-exhausted claims back into case. If

1 petitioner wishes to add claims he has recently exhausted back into the petition, he must file a  
2 motion to amend the petition.

3 It is therefore RECOMMENDED that the September 14, 2017 motion to stay (ECF No.  
4 55) be denied.

5 These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
10 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: March 13, 2018.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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