

1 Having reviewed the file, the court finds the findings and recommendations to be supported by the
2 record and by the proper analysis.

3 Regarding a certificate of appealability (COA), on the one hand the Ninth Circuit in
4 unpublished decisions has held that denials of stay and abey motions are not final and therefore not
5 immediately appealable. *See Boyle v. Kernan*, No. 16-56884, 2017 WL 6604072, at *1 (9th Cir.
6 Oct. 11, 2017) (“The collateral order doctrine does not apply in this case because appellant will be
7 able to appeal the denial of the motion for stay and abeyance after the district court disposes of his
8 pending petition.”); *Haithcock v. Veal*, 310 F. App’x 121, 122 (9th Cir. 2009) (denial of a stay and
9 abey motion is “not a final, appealable order under 28 U.S.C. § 1291”); *but see Williams v. Walsh*,
10 411 F. App’x 459, 461 (3d Cir. 2011) (stay and abey orders are final and appealable under the
11 collateral order doctrine). Nonetheless, courts often include COA determinations in denying such
12 motions, and the Ninth Circuit has issued COAs to decide whether denials were proper. *Casillas*
13 *v. Sec’y of Corr.*, No. 117CV00511LJOSKOHC, 2017 WL 1954251, at *7 (E.D. Cal. May 11,
14 2017), *report and recommendation adopted*, No. 117CV00511LJOSKO, 2017 WL 2691558 (E.D.
15 Cal. June 22, 2017) (declining to issue COA on denial of stay); *Mena v. Long*, 813 F.3d 907, 909
16 (9th Cir. 2016) (granting COA on whether district court’s denial of stay and abey motion to
17 establish rules for proper review without addressing whether the order was final). Having
18 considered the question here, the court declines to issue a COA.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations filed September 17, 2018, are adopted in full;
- 21 2. Petitioner’s motion for stay (ECF No. 6) is denied, and petitioner is ordered to
22 file an amended petition raising only his exhausted claims (1) and (5) within thirty days; petitioner
23 is cautioned that his failure to comply with this order will result in the dismissal of this action; and
- 24 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.
25 § 2253.

26 DATED: March 5, 2019.

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28 UNITED STATES DISTRICT JUDGE