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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROLAND THOMAS KOCH,  
Petitioner,  
v.  
UNKNOWN,  
Respondent.

No. 2:18-cv-3199 KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, committed to a state hospital and proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived explicitly by respondent’s counsel. 28 U.S.C. § 2254(b)(3).<sup>1</sup> A waiver of exhaustion, thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to

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<sup>1</sup> A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).

1 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d  
2 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

3 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to  
4 exhaust state court remedies. The claims have not been presented to the California Supreme  
5 Court. Further, there is no allegation that state court remedies are no longer available to  
6 petitioner. Accordingly, the petition should be dismissed without prejudice.<sup>2</sup>

7 Good cause appearing, IT IS HEREBY ORDERED that:

8 1. Petitioner is granted leave to proceed in forma pauperis;

9 2. The Clerk of the Court is directed to serve a copy of these findings and  
10 recommendations together with a copy of the petition filed in the instant case on the Attorney  
11 General of the State of California;

12 3. The Clerk of the Court is directed to assign a district judge to this case; and

13 IT IS HEREBY RECOMMENDED that petitioner's application for a writ of habeas  
14 corpus be dismissed for failure to exhaust state remedies.

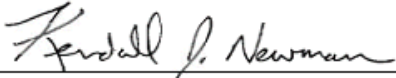
15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
17 after being served with these findings and recommendations, any party may file written  
18 objections with the court and serve a copy on all parties. Such a document should be captioned  
19 "Objections to Magistrate Judge's Findings and Recommendations." If petitioner files objections,  
20 he shall also address whether a certificate of appealability should issue and, if so, why and as to  
21 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the  
22 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.  
23 § 2253(c)(3). Any response to the objections shall be served and filed within fourteen days after  
24 service of the objections. The parties are advised that failure to file objections within the

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25 <sup>2</sup> Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations  
26 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period  
27 will start to run on the date on which the state court judgment became final by the conclusion of  
28 direct review or the expiration of time for seeking direct review, although the statute of  
limitations is tolled while a properly filed application for state post-conviction or other collateral  
review is pending. 28 U.S.C. § 2244(d).

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3 Dated: January 8, 2019

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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