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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILLIP R. HERNANDEZ,
Petitioner,
v.
JOSIE GASTELO, Warden,
Respondent.

No. 2:19-cv-2414 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 26, 2020, the magistrate judge filed findings and recommendations, 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. Petitioner has not filed objections, but he has filed a response wherein he expresses his intent to dismiss the unexhausted claim that is the subject of Respondent’s motion to dismiss and to proceed only on his exhausted claims.


The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law

1 by the magistrate judge are reviewed de novo by both the district court and [the appellate] court
2 . . .”). Having reviewed the file, the court finds the findings and recommendations to be
3 supported by the record and by the proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The findings and recommendations filed August 26, 2020 (ECF No. 19), are adopted in
6 full;
- 7 2. Respondent’s motion to dismiss (ECF No. 15) is granted;
- 8 3. Petitioner’s motion for stay and abeyance (ECF No. 17) is denied; and
- 9 4. This matter is referred back to the magistrate judge for further proceedings consistent
10 with this order. Case to remain open.

11 DATED: December 15, 2020.

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14 CHIEF UNITED STATES DISTRICT JUDGE
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