

1 petitioner has failed to exhaust state court remedies. The claims have not been presented to the
2 California Supreme Court. Further, there is no allegation that state court remedies are no longer
3 available to petitioner.

4 The exhaustion of state court remedies is a prerequisite to the granting of a petition for
5 writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived
6 explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).¹ A waiver of exhaustion, thus, may
7 not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the
8 highest state court with a full and fair opportunity to consider all claims before presenting them to
9 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d
10 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986). Accordingly, the petition should
11 be dismissed without prejudice for failure to exhaust state remedies.²

12 Good cause appearing, IT IS HEREBY ORDERED that:

13 1. Petitioner is granted leave to proceed in forma pauperis (ECF No. 2);

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

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

19 These findings and recommendations will be submitted to the United States District Judge
20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, petitioner may file written
22 objections with the court. The document should be captioned "Objections to Findings and

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

26 ² Petitioner is cautioned that the habeas corpus statute imposes a one year statute of
27 limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one
28 year period will start to run on the date on which the state court judgment became final by the
conclusion of 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 Recommendations.” Petitioner is advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
3 (9th Cir. 1991).

4 Dated: March 2, 2021

5 /s/ Gregory G. Hollows
6 UNITED STATES MAGISTRATE JUDGE
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