

1 California Supreme Court by way of a petition for review.² Petitioner also states that he filed a
2 state habeas petition in Sacramento County Superior Court, *id.* at 2-3, but that he declined to file a
3 habeas petition with any higher state court because “there is no appeal for habeas corpus
4 proceedings.”³ *Id.* at 3. A federal habeas court may not consider the merits of a petitioner’s
5 claims unless they have first been presented to the highest state court. *See Walden v. Shinn*, 990
6 F.3d 1183, 1196 (9th Cir. 2021) (“Exhaustion requires that a petitioner fairly present his federal
7 claims to the highest state court available.”) (internal quotation marks omitted) (quoting *Davis v.*
8 *Silva*, 511 F.3d 1005, 1008 (9th Cir. 2008)). Here, petitioner failed to present his claims to the
9 California Supreme Court and, so I may not consider their merits. *Raspberry v. Garcia*, 448 F.3d
10 1150, 1154 (9th Cir. 2006) (“Once a district court determines that a habeas petition contains only
11 unexhausted claims, it need not inquire further as to the petitioner’s intentions. Instead, it may
12 simply dismiss the habeas petition for failure to exhaust.”). Petitioner may re-file his claims if
13 and when he has properly exhausted them in state court. Additionally, if he has, in fact,
14 exhausted his claims, he may explain as much in his objections to these recommendations.

15 Accordingly, it is RECOMMENDED that the amended petition, ECF No. 22, be
16 DISMISSED as unexhausted.

17 These findings and recommendations are submitted to the U.S. District Court Judge
18 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
19 Practice for the United States District Court, Eastern District of California. Within fourteen days
20 of service of the findings and recommendations, petitioner may file written objections to the

21 ² Petitioner has left the form blank as to whether he presented his direct appeal to the
22 California Supreme Court. The form instructs that, “[i]f you sought further review by a higher
23 state court” the petitioner is to indicate as much. ECF No. 22 at 2. I note that, in a previous
24 petition, petitioner attached what purports to be a decision by the California Supreme Court on his
25 claims. ECF No. 18 at 31. That “decision” is a docket sheet. *Id.* That docket indicates that the
26 only issue to which the California Supreme Court ordered a response is “[d]o the conditions of
confinement in the Rio Consumnes Correctional Center, as set forth in claim 1, violate the Eighth
Amendment?” *Id.* The California Supreme Court ultimately denied this petition as moot, *id.*, an
indication that the claims at issue in this case were not considered.

27 ³ Petitioner is correct that the denial of his state habeas petition was non-appealable. He
28 could still, however, file an original petition with the California Supreme Court. *Nino v. Galaza*,
183 F.3d 1003, 1006, n.2 (9th Cir. 1999) (“In California, the supreme court, intermediate courts
of appeal, and superior courts all have original habeas corpus jurisdiction.”).

1 findings and recommendations with the court and serve a copy on all parties. That document
2 must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
3 District Judge will then review the findings and recommendations under 28 U.S.C.
4 § 636(b)(1)(C).

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6 IT IS SO ORDERED.

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8 Dated: May 5, 2022


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JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE