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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LOY LOUIS RACKLEY,
Petitioner,
v.
MARCUS POLLARD, Warden,
Respondent.

No. 2:21-cv-1784-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

On October 12, 2021, the court ordered a response from respondent with respect to petitioner’s filing of an application for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, wherein counsel for petitioner sought a stay and abeyance, setting forth exhausted claims concerning sufficiency of the evidence, with unexhausted claims pending in the California Supreme Court. ECF No. 5.

Respondent does not oppose petitioner’s motion for a *Rhines* stay to exhaust the claims that petitioner has already raised and is currently pursuing in state court. ECF No. 8. Good cause appearing, petitioner’s motion for a stay and abeyance of the petition should be granted. Pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), petitioner shall notify the court within thirty days of the claims being exhausted.

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1 Accordingly, it is ORDERED that the Clerk of the Court shall randomly assign a United
2 States District Judge to this action.

3 Further, it is RECOMMENDED that:

- 4 1. Petitioner’s motion to stay (ECF No. 4) be granted and a stay in this matter be
5 imposed pending exhaustion of petitioner’s state court remedies; and
- 6 2. Within thirty days of the final adjudication by the California Supreme Court of
7 petitioner's pending petition, petitioner be directed to inform this court so that the stay
8 may be lifted.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
14 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
15 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: December 7, 2021.

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18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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