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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS HENSON JR.,
Petitioner,
v.
GISELLE MATTERSON,
Respondent.

No. 2:22-cv-0712 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent’s answer was filed on July 21, 2022. Shortly after the answer was filed, petitioner filed a motion asking that his petition be stayed so that he can pursue claims other than the ones identified in his habeas petition in California courts. The court presumes that if petitioner does not succeed on his claims in California courts, he will seek to add at least one of those claims to the claims already before this court.

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). In Kelly v. Small, 315 F.3d 1063, 1070-71 (9th Cir. 2003), the Ninth Circuit found district courts have the discretion to stay a petition containing claims where state court remedies have been exhausted, such as the petition currently before this court, while the petitioner attempts to exhaust state court remedies with respect to other claims. While the court will recommend that petitioner’s request for a stay be granted under Kelly so that

1 petitioner may pursue other claims in California's courts, petitioner is informed that a stay under
2 Kelly does not serve to toll the applicable one-year limitations period as to any claims not already
3 before the court and the court makes no representation as to whether such claims would be timely.

4 Accordingly, IT IS HEREBY RECOMMENDED that:

- 5 1. Petitioner's motion for a stay (ECF No. 15) be granted; and
- 6 2. Petitioner's petition for a writ of habeas corpus be stayed to permit petitioner the
7 opportunity to pursue additional claims for relief in California courts.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
13 objections shall be served and filed within fourteen days after service of the objections. The
14 parties are advised that failure to file objections within the specified time may waive the right to
15 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: September 6, 2022



17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE

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