



1 squarely rejected that argument. Thus, Mundy’s new claim is plainly meritless. And his  
2 motion for a stay to pursue this unexhausted claim, therefore, fails.

3 Mundy seeks a stay under either *Rhines v. Weber*, 544 U.S. 269 (2005), or *Kelly v.*  
4 *Small*, 315 F.3d 1063 (9th Cir. 2003), *overruled on other gds. by Robbins v. Carey*, 481  
5 F.3d 1143 (9th Cir. 2007). But neither a *Rhines* stay nor a *Kelly* stay should be granted to  
6 exhaust a plainly meritless claim. *Rhines*, 544 U.S. at 277 (“[T]he district court would  
7 abuse its discretion if it were to grant [the petitioner] a [*Rhines*] stay when his unexhausted  
8 claims are plainly meritless.” (citation omitted)); *Knowles v. Muniz*, 228 F. Supp. 3d 1009,  
9 1016 (C.D. Cal. 2017) (“[A] *Kelly* stay will be denied when the court finds such a stay  
10 would be futile,” such as when “petitioner seeks a stay to exhaust a meritless claim.”  
11 (citations omitted)).

12 The Court recommends that Mundy’s motion for a stay be **DENIED** and that his  
13 unexhausted ineffective-assistance-of-counsel claim be **DISMISSED**. Upon being served  
14 with a copy of this report, each party has 14 days to file any objections. *See* Fed. R. Civ. P.  
15 72(b)(2). A party may respond to any such objection within 14 days of being served with  
16 it. *See id.*

17 Dated: December 4, 2017

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20 Hon. Andrew G. Schopler  
21 United States Magistrate Judge  
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