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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MICHAEL BRUGMAN,

12 Petitioner,

13 v.

14 PATRICK EATON,

15 Respondent.
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Case No.: 3:22-cv-1350-RBM-LR

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION**

**(2) DENYING STAY UNDER
RHINES AND GRANTING**

**STAY PURSUANT TO KELLY
(3) STAYING CASE**

[Docs. 6, 9]

20 Petitioner, a state prisoner represented by counsel, has filed a Petition for Writ of
21 Habeas Corpus pursuant to 28 U.S.C. § 2254. Presently before the Court is Petitioner's
22 Application to Hold Federal Habeas Petition in Abeyance Pending Exhaustion of Issues
23 in State Court ("Motion to Stay"). (Doc. 6.) Respondent filed a Response that does not
24 oppose the granting of a stay, but asserts the stay should be granted under *Kelly v. Small*,
25 315 F.3d 1063 (9th Cir. 2003) and *King v. Ryan*, 564 F.3d 1133 (9th Cir. 2009) rather
26 than under *Rhines v. Weber*, 544 U.S. 269 (2005) as requested by Petitioner. (Doc. 8.)

27 Magistrate Judge Lupe Rodriguez, Jr. issued a Report and Recommendation
28 ("R&R") on May 2, 2023 recommending that the Motion to Stay be denied as to a stay

1 under *Rhines* and granted as to a stay under *Kelly*. (Doc. 9.) Any objections to the R&R
2 were required to be filed no later than May 17, 2023. (Doc. 9 at 9.)

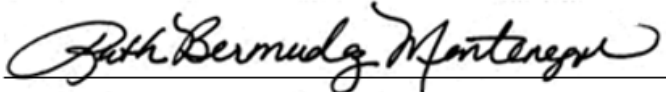
3 A district court “may accept, reject, or modify, in whole or in part, the findings or
4 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United*
5 *States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). The district judge must “make a *de*
6 *novo* determination of those portions of the report . . . to which objection is made[,]” but
7 not otherwise. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
8 2003) (“The statute makes it clear that the district judge must review the magistrate
9 judge’s findings and recommendations *de novo if objection is made*, but not otherwise.”)
10 (emphasis in original).

11 Neither party has filed any objections to the Magistrate Judge’s R&R. Thus,
12 having reviewed the R&R, the Court finds it thorough, well-reasoned, and contains no
13 clear error. Accordingly, the Court hereby: (1) **ADOPTS** the Magistrate Judge’s R&R in
14 its entirety (Doc. 9); (2) **DENIES** a stay under *Rhines* and **GRANTS** a stay under *Kelly*;
15 and (3) **STAYS** this case.

16 Petitioner is **DIRECTED** to file a status report no later than **August 17, 2023** and
17 every ninety (90) days thereafter that details his progress toward exhaustion. The Clerk
18 of Court will administratively close this case until further Order of this Court.

19 **IT IS SO ORDERED.**

20 Dated: May 19, 2023

21 
22 HON. RUTH BERMUDEZ MONTENEGRO
23 UNITED STATES MAGISTRATE JUDGE
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