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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 EDWIN LAMAR MARTIN,  
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14 v.  
15 BRIAN CATES, Warden,  
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Petitioner,  
Respondent.

Case No.: 22cv1563-CAB-DDL

**ORDER ADOPTING REPORT AND  
RECOMMENDATION [Doc. No. 6]  
AND GRANTING PETITIONER'S  
MOTION FOR STAY AND  
ABEYANCE [Doc. No. 2]**

On October 11, 2022, Petitioner Edwin Lamar Martin (“Petitioner”), a state prisoner proceeding *pro se* and *in forma pauperis*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, [Doc. No. 1.] On October 11, 2022, Petitioner also filed a motion for stay and abeyance. [Doc. No. 2.]

On December 29, 2022, Magistrate Judge David L. Leshner issued a Report and Recommendation (“Report”), recommending that the Court **GRANT** Petitioner’s motion for stay and abeyance. [Doc. No. 6.] The Report also ordered that any objections were to be filed by January 12, 2023. [Report at 7.] To date, no objection has been filed, nor has there been a request for additional time in which to file an objection.

A district court’s duties concerning a magistrate judge’s report and recommendation and a respondent’s objections thereto are set forth in Rule 72(b) of the Federal rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are

1 filed, the district court is not required to review the magistrate judge’s report and  
2 recommendation. The Court reviews de novo those portions of the Report and  
3 Recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The Court may  
4 “accept, reject, or modify, in whole or in part, the findings or recommendations made by  
5 the magistrate judge.” *Id.* However, “[t]he statute makes it clear that the district judge  
6 must review the magistrate judge's findings and recommendations de novo if objection is  
7 made, but not otherwise.” *United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th  
8 Cir.2003) (en banc) (emphasis in original). “Neither the Constitution nor the statute  
9 requires a district judge to review, de novo, findings and recommendations that the  
10 parties themselves accept as correct.” *Id.*

11 Here, neither party has timely filed objections to the Report. Having reviewed it,  
12 the Court finds that it is thorough, well-reasoned, and contains no clear error.  
13 Accordingly, the Court **HEREBY ADOPTS** Magistrate Judge Leshner’s Report and  
14 Recommendation [Doc. No. 6] in its entirety. For the reasons stated in the Report, which  
15 is incorporated herein by reference, the Court **GRANTS** the motion for stay and  
16 abeyance as follows:

17 1. Petitioner’s motion for a *Rhines*<sup>1</sup> stay is **GRANTED**.

18 2. By **April 18, 2023**, and for every three months thereafter (that is, by July 18,  
19 2023; October 17, 2023; and so on), Petitioner must file a status report with this Court  
20 that details his progress in exhausting his unexhausted claims in the state courts.

21 3. Within thirty days of the state court’s decision resolving his claims, Petitioner  
22 must file a motion requesting that the stay be lifted. Once Petitioner moves to lift the stay,

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28 <sup>1</sup> *Rhines v. Weber*, 544 U.S. 269, 277 (2005).

1 Petitioner's obligation to file these status reports will end.

2 **IT IS SO ORDERED.**

3 Dated: January 17, 2023



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5 Hon. Cathy Ann Bencivengo  
6 United States District Judge  
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