UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GILBERTO DIAZ-SANCHEZ, Petitioner, v. JEFFREY BEARD, et al., Respondents.	No. 1:14-cv-01204-DAD-SKO ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND GRANTING PETITIONER'S MOTION FOR STAY AND ABEYANCE (Doc. Nos. 63, 64)

Petitioner is a state prisoner proceeding with counsel in this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

This case was closed on September 7, 2017, pursuant to an order of this court finding the petition time-barred. (Doc. No. 54.) On October 5, 2017, the petitioner filed a motion for reconsideration of the court's order closing the case. (Doc. No. 56.) Following an extension of time, respondents' opposition was filed on November 17, 2017. (Doc. No. 60.) Subsequently, petitioner filed an application on January 8, 2018 to stay this case to allow him to exhaust in state court various claims he wishes to raise in the motion for reconsideration, purportedly because a change in law occurred after petitioner submitted his motion for reconsideration. (*See* Doc. No. 63 at 2.) No opposition to petitioner's request for application for stay and abeyance was filed. Thereafter, on January 31, 2018, the assigned magistrate judge issued findings and

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recommendations recommending that the petitioner's motion for stay be granted. (Doc. No. 64.) The findings and recommendations, which were served on all parties on the same date, provided that objections could be served within thirty days. More than thirty days have elapsed and no objections have been filed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), having carefully reviewed the entire file *de novo*, the undersigned concludes that the findings and recommendations are supported by the record and proper analysis.

Given the above:

1. The findings and recommendations issued January 31, 2018 (Doc. No. 64) are adopted in full;
2. Petitioner's motion for stay to permit exhaustion of his unexhausted claims in state court, filed January 8, 2018 (Doc. No. 63) is granted;
3. Petitioner filed a status report on February 28, 2018 and shall continue to file additional status reports every ninety (90) days thereafter; and
4. Within thirty (30) days after the California Supreme Court issues a final order resolving the unexhausted claims, petitioner shall file a motion to lift the stay and an amended habeas petition setting forth all exhausted claims. The assigned magistrate judge shall then screen the petition pursuant to the Rules Governing Section 2254 Cases.

IT IS SO ORDERED.

Dated: **May 15, 2018**

Dale A. Drozd

UNITED STATES DISTRICT JUDGE