UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GILBERTO DIAZ-SANCHEZ, Petitioner, v. JEFFREY BEARD and NEIL McDOWELL, Respondents.	No. 1:14-cv-01204-DAD-SKO HC **FINDINGS AND RECOMMENDATIONS THAT THE COURT GRANT PETITIONER'S SECOND MOTION TO MODIFY STAY AND ABEYANCE** **(Doc. 72)**

Petitioner, Gilberto Diaz-Sanchez, is a state prisoner represented by counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 31, 2018, the undersigned recommended granting Petitioner's motion for stay and abeyance, (Doc. 64), which the Court adopted on May 15, 2018. (Doc. 66.) On May 29, 2018, Petitioner filed a motion to modify the stay to exhaust additional claims with the state court, (Doc. 68), which was granted on August 22, 2018. (Doc. 70.)

On August 27, 2018, Petitioner filed a second motion to modify the stay to exhaust claims pursuant to a recent Ninth Circuit Court of Appeal decision. (Doc. 72.)

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The undersigned, having previously found good cause for the stay, recommends granting the motion to modify the stay to include additional unexhausted claims Petitioner may present to the state court.

Conclusion and Recommendations

The Court hereby RECOMMENDS:

1. The prior order granting the motion for stay and abeyance, (Doc. 66), be modified to include any unexhausted claims pursuant to the recent holding in *Henry v. Spearman*, 899 F.3d 703 (9th Cir. 2018).

2. Petitioner is DIRECTED to file a status report within ninety (90) days of the date of this Order advising the Court of the status of the state court proceedings.

3. Petitioner shall file an additional status report every ninety (90) days thereafter.

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 Court shall then screen the petition pursuant to the Rules Governing Section 2254 Cases.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty (30) days** after being served with these Findings and Recommendations, either party may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and filed within **fourteen (14) days** after service of the objections. The parties are advised that failure to file objections within the specified time may constitute waiver of the right to appeal the District Court's

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order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **October 15, 2018**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE