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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW DAVID HAFF,

Petitioner,

No. CIV S-10-1184 JAM EFB P

vs.

MATTHEW CATE,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a former state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. On February 1, 2011, the court ordered petitioner to file, within 30 days, an opposition or statement of no opposition to respondent’s December 2, 2010 motion to dismiss. Dckt. No. 17. The court admonished petitioner that failure to do so would result in a recommendation that this action be dismissed without prejudice.

On March 7, 2011 petitioner filed a motion for an extension of time to oppose the motion to dismiss, due to his release on parole and subsequent move. Dckt. No. 19. Petitioner informed the court that he expected to complete the opposition early, but sought a 60-day extension in order to ensure “thoroughness.” *Id.* The motion was granted on March 15, 2011, providing petitioner 60 days from service of the order to file the opposition. Dckt. No. 20.

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1 More than eighty days have now elapsed since the court granted petitioner's request for
2 an extension of time. Petitioner has not filed the opposition, sought additional time, or otherwise
3 responded to the court's order. Accordingly, the undersigned will recommend that this action be
4 dismissed for failure to prosecute. L.R. 110; *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir.
5 1995) (affirming district court's dismissal pursuant to local rule due to plaintiff's failure to file
6 an opposition to defendants' motion to dismiss); *see* Fed. R. Civ. P. 41(b).

7 Accordingly, it is hereby RECOMMENDED that this action be dismissed without
8 prejudice.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
14 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
15 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).
16 In his objections, petitioner may address whether a certificate of appealability should issue in the
17 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
18 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it
19 enters a final order adverse to the applicant).

20 DATED: June 7, 2011.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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