UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE ROCKY WINDSOR

Petitioner,

v.

JOEL MARTINEZ,

Respondent.

No. 2:15-cv-2374 WBS GGH

FINDINGS AND RECOMMENDATION

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 31, 2016 Prisoner was ordered to show cause, within thirty (30) days, why he failed to oppose Respondent's April 1, 2016 Motion to Dismiss his Petition (failure to exhaust), why that failure should not be deemed a waiver of any opposition, and therefore why the Motion to Dismiss should not be granted. ECF No. 15. The thirty day period has expired and Petitioner has filed no explanation for the failure to oppose or otherwise responded to the court's Order.

The Petitioner was cautioned that failure to respond to the Order to Show Cause, or to file an Opposition to the pending Motion to Dismiss, would result in a recommendation that this action be dismissed.

The undersigned has reviewed the Motion and finds that it has merit.

////

Accordingly, it is hereby recommended that:

1. Respondent's motion to dismiss, filed April 1, 2016, be granted; and

2. The District Court decline to issue a certificate of appealability.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within seven (7) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 9, 2016

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE