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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDALL R. POWELL,  
Petitioner,  
v.  
W.L. MONTGOMERY,  
Respondent.

No. 2:16-cv-0548-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On May 4, 2016, respondent moved to dismiss on the ground that the petition is barred by the statute of limitations. ECF No. 22. On June 9, 2016, the court informed petitioner of the requirements for filing an opposition to any motion to dismiss. That order gave petitioner 21 days to file an opposition or statement of non-opposition and warned petitioner that failure to do so would result in a recommendation that this action be dismissed. After petitioner failed to file an opposition or a statement of no opposition to the motion, the court recommended dismissal of this action for failure to prosecute. ECF No. 25.

Petitioner then filed a response to the findings and recommendations, stating that after submitting his petition, he “never received a response . . . .” ECF No. 26. In an abundance of caution, the court vacated the recommendation of dismissal and ordered respondent to re-serve

1 the motion to dismiss on petitioner. ECF No. 27. The order granted petitioner another 30 days  
2 within which to file an opposition or statement of non-opposition and warned petitioner that  
3 failure to do so would result in another recommendation that this action be dismissed.

4 Respondent re-served the motion to dismiss on August 3, 2016. ECF No. 28. More than  
5 30 days have passed and petitioner has not filed an opposition, a statement of no opposition, or  
6 otherwise responded to the motion.

7 Accordingly, it is RECOMMENDED that this action be dismissed. Fed. R. Civ. P. 41(b);  
8 Rule 12, Rules Governing § 2254 Cases.

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). In  
16 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: September 8, 2016.

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22 EDMUND F. BRENNAN  
23 UNITED STATES MAGISTRATE JUDGE  
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