

1 In his Objections, Petitioner argues that the limitations period stated in the R&R,
2 (R&R at 3), is “clearly not correct,” but fails to explain why. (Objections at 4.) In
3 fact, Petitioner does not claim that he qualifies for a later accrual date, under 28 U.S.C.
4 §§ 2244(d)(1)(B)-(D), and does not allege any facts that would allow for any such
5 accrual. (*See generally* Objections.)

6 Petitioner also argues that he is entitled to equitable tolling because:
7 (1) Petitioner could not show, until recently, “his inability to pay [the] [restitution] fine
8 [that his plea agreement required]”; (2) his state habeas proceedings were “severely
9 tainted”; and (3) Petitioner had “not even [] the slightest bit of legal knowledge”
10 regarding his case. (Objections at 5-6.)

11 First, equitable tolling is granted in “rare cases” when Petitioner can show that
12 he pursued his rights diligently and an “extraordinary circumstance prevented timely
13 filing,” not when Petitioner shows that he cannot endure the sentence imposed. *See*
14 *Yeh v. Martel*, 751 F.3d 1075, 1077 (9th Cir. 2014).

15 Second, Petitioner’s conclusory assertions regarding “tainted” state habeas
16 proceedings “have no evidentiary support and are manifestly insufficient to warrant
17 equitable tolling.” *Oglesby v. Soto*, 2015 WL 4399488, at *1 (C.D. Cal. July 17,
18 2015).

19 Third, “a petitioner’s *pro se* status and lack of legal knowledge or training are
20 insufficient to warrant the granting of equitable tolling.” *George v. McEwen*, 2013
21 WL 5676202, at *1 (C.D. Cal. Oct. 17, 2013).

22 As such, Petitioner is not entitled to equitable tolling, and the Petition remains
23 untimely.

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1 Accordingly, IT IS ORDERED THAT:

- 2 1. The Report and Recommendation is approved and accepted;
- 3 2. Judgment be entered dismissing this action with prejudice; and
- 4 3. The Clerk serve copies of this Order on the parties.

5 Additionally, for the reasons stated in the Report and Recommendation, the
6 Court finds that Petitioner has not made a substantial showing of the denial of a
7 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Slack v. McDaniel*,
8 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a certificate of
9 appealability.¹

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11 DATED: March 6, 2017



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13 HON. MANUEL L. REAL
14 UNITED STATES DISTRICT JUDGE
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26 ¹ Despite Petitioner's objections to this declination, (Objections at 9), it is well-established that
27 a certificate of appealability is properly denied where a petition is untimely and the petitioner does
28 not qualify for an actual innocence exception. *See Kennedy v. Cates*, 2010 WL 966572 (C.D. Cal.
Mar. 11, 2010).