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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GEORGE K. COLBERT,	)	1:10-cv-01532-LJO-SMS-HC
	)	
Petitioner,	)	ORDER RE: FINDINGS AND
	)	RECOMMENDATIONS RE: RESPONDENT'S
v.	)	MOTION TO DISMISS THE PETITION
	)	(DOCS. 15, 14, 1, 8)
	)	
L. L. SCHULTEIS,	)	<b>ORDER GRANTING RESPONDENT'S</b>
	)	<b>MOTION TO DISMISS THE PETITION</b>
Respondent.	)	<b>(DOC. 14)</b>
	)	
	)	<b>ORDER DISMISSING PETITION WITHOUT</b>
	)	<b>PREJUDICE FOR FAILURE TO EXHAUST</b>
	)	<b>STATE COURT REMEDIES</b>
	)	
	)	<b>ORDER DECLINING TO ISSUE A</b>
	)	<b>CERTIFICATE OF APPEAL AND</b>
	)	<b>DIRECTING THE CLERK TO CLOSE THE</b>
	)	<b>CASE</b>

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On May 31, 2011, the Magistrate Judge filed findings and recommendations to deny Respondent's motion to dismiss the petition on the ground of untimeliness, grant Respondent's motion

1 to dismiss the petition for failure to exhaust state court  
2 remedies, dismiss the petition without prejudice for failure to  
3 exhaust state court remedies, decline to issue a certificate of  
4 appealability, and direct the clerk to close the case.

5 The findings and recommendations were served on all parties  
6 on the same date, and they advised all parties that objections to  
7 the findings and recommendations could be filed within thirty  
8 (30) days, and replies within fourteen (14) days after the filing  
9 of any objections.

10 On June 29, 2011, Respondent filed timely objections.  
11 Although the time for filing a reply has passed, no reply has  
12 been filed.

13 In accordance with the provisions of 28 U.S.C. § 636  
14 (b) (1) (C), this Court has conducted a *de novo* review of the case.  
15 The undersigned has carefully reviewed the entire file and has  
16 considered the objections; the undersigned has determined there  
17 is no need to modify the findings and recommendations based on  
18 the points raised in the objections. The Court finds that the  
19 findings and recommendations are supported by the record and  
20 proper analysis.

21 Accordingly, it is ORDERED that:

22 1) The Findings and Recommendations filed on May 31, 2011,  
23 are ADOPTED IN FULL; and

24 2) Respondent's motion to dismiss the petition for  
25 Petitioner's failure to exhaust state court remedies is GRANTED;  
26 and

27 3) The petition is DISMISSED without prejudice for failure  
28 to exhaust state court remedies; and

1           4) The Court DECLINES to issue a certificate of  
2 appealability; and

3           5) The Clerk is DIRECTED to close the case.  
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5 IT IS SO ORDERED.

6 **Dated: July 18, 2011**

**/s/ Lawrence J. O'Neill**  
**UNITED STATES DISTRICT JUDGE**

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