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

MICHAEL J. KIMBRELL,

Petitioner,

No. CIV S-08-1044 FCD EFB P

vs.

STEVE MOORE, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254.

On September 4, 2009, respondents moved to dismiss the petition on the ground that petitioner has failed to exhaust his available state remedies. On December 4, 2009, the court informed petitioner of the requirements for filing an opposition to any motion to dismiss. That order gave petitioner an additional 30 days to file an opposition or statement of non-opposition and warned him that failure to do so could result in dismissal.

The 30 days have passed and petitioner has not filed an opposition or a statement of no opposition nor otherwise responded to the December 4, 2009 order.

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1 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.
2 Fed. R. Civ. P. 41(b); Rule 12, Rules Governing § 2254 Cases.

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

14 Dated: March 1, 2010.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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