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

ANDREW A. CEJAS,

Petitioner,

No. 2:08-cv-2494 KJM EFB P

vs.

JAMES A. YATES,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 26, 2012, the assigned district judge adopted the undersigned’s recommendation that respondent’s motion to dismiss be granted and all claims in the amended petition, with the exception of petitioner’s instructional error claim, be dismissed. In the same order, the district judge also denied petitioner’s request for a certificate of appealability as premature.

On October 29, 2012, petitioner filed another request for a certificate of appealability. Dckt. No. 86. In his request, petitioner explains that he only wishes to appeal the claims that have been dismissed and that he will only seek to appeal the remaining claim once it is denied.

Id.

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1 Rule 11 of the Rules Governing Section 2242 Cases provides that “[t]he district court
2 must issue or deny a certificate of appealability when it enters a *final* order adverse to the
3 applicant.” (emphasis added). While the court has dismissed some of petitioner’s claims, a final
4 order adverse to petitioner has not been entered in this case. Accordingly, the court need not
5 issue a certificate of appealability at this time.

6 This does not mean, however, that petitioner will be foreclosed from later appealing the
7 court’s September 26, 2012 order dismissing some of his claims. This is because an
8 interlocutory order dismissing some claims will merge with the final judgment (once it is
9 entered) and may be challenged on an appeal from that judgment. *City of Los Angeles, Harbor*
10 *Division v. Santa Monica Baykeeper*, 254 F.3d 882, 889 n.1 (9th Cir. 2001). Accordingly,
11 petitioner’s motion for a certificate of appealability is denied as premature.

12 IT IS SO ORDERED.

13 Dated: November 1, 2012.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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