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

JAMES BAILEY

Petitioner,

No. 2: 09-cv-1856 GEB KJN P

vs.

KEN CLARK,

Respondent.

FINDINGS & RECOMMENDATIONS

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Petitioner is a state prisoner proceeding without counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent’s motion to dismiss filed September 28, 2009.


On July 6, 2010, the undersigned denied petitioner’s fifth motion for extension of time to file an opposition. The July 6, 2010, order stated that petitioner had ample opportunity during the ninth months since respondent filed his motion to prepare his opposition. Petitioner’s opposition was ordered due on August 12, 2010. Petitioner did not file an opposition.

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion . . . .” Petitioner’s failure to oppose should be deemed a waiver of opposition to the granting of the motion.

1                   Accordingly, IT IS HEREBY RECOMMENDED that respondent's September 28,  
2 2009 motion to dismiss (Dkt. No. 15) be granted.

3                   These findings and recommendations are submitted to the United States District  
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
5 days 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." Any reply to the objections  
8 shall be served and filed within fourteen days after service of the objections. The parties are  
9 advised that failure to file objections within the specified time may waive the right to appeal the  
10 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: August 23, 2010

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15 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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