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

BRIAN TOMASELLO,

Petitioner,

No. CIV S-10-0166 JAM EFB P

vs.

J. W. HAVILAND,

Respondent.

FINDINGS AND RECOMMENDATIONS

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By order filed February 11, 2011, petitioner was ordered to show cause, within thirty days, why his action should not be dismissed as moot. The thirty day period has now expired, and petitioner has not shown cause or otherwise responded to the court’s order.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v.*

1 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In  
2 his objections petitioner may address whether a certificate of appealability should issue in the  
3 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing  
4 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it  
5 enters a final order adverse to the applicant).

6 DATED: April 7, 2011.

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8 EDMUND F. BRENNAN  
9 UNITED STATES MAGISTRATE JUDGE  
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