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

CLARENCE B. HICKMAN, SR.,

No. CIV S-10-2925-GEB-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

COUNTY OF BUTTE,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s amended petition for a writ of habeas corpus (Doc. 15).

Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the instant case, it is plain that petitioner is not entitled to federal habeas relief. In particular, the exhaustion of available state remedies is required before claims can be presented to the federal court in a habeas corpus case. See Rose v. Lundy, 455 U.S. 509 (1982); see also Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir. 2003); Hunt v. Pliler, 336 F.3d 839 (9th Cir. 2003). A petitioner

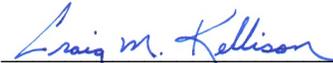
1 can satisfy the exhaustion requirement by providing the highest state court with a full and fair
2 opportunity to consider all claims before presenting them to the federal court. See Picard v.
3 Connor, 404 U.S. 270, 276 (1971), Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1986).

4 Upon review of the instant petition, the court concludes that petitioner has not
5 exhausted state court remedies as to any of his claims. In particular, petitioner appears to be
6 challenging his continued placement in a state hospital. In the petition, petitioner states that
7 “[t]he matter is still pending in Butte County Superior Court for my release.” Petitioner
8 references case no. 108390. Because it appears that the claims raised in the instant federal
9 petition have not yet been presented to the state’s highest court. As such, the petition is
10 unexhausted and must be dismissed.

11 Based on the foregoing, the undersigned recommends that petitioner’s amended
12 petition for a writ of habeas corpus (Doc. 15) be summarily dismissed, without prejudice, for
13 failure to exhaust state court remedies and that all pending motions be denied as moot.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. Responses to objections shall be filed within 14 days after service of
18 objections. Failure to file objections within the specified time may waive the right to appeal.
19 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 DATED: January 20, 2011

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23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE
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