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8	IN THE UNITED STATES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA
10	MOHAMMAD ABEDI,
11	Petitioner, No. CIV S-10-3184 JAM DAD P
12	VS.
13	GROUNDS, Warden,
14	Respondent. <u>FINDINGS AND RECOMMENDATIONS</u>
15	/
16	Petitioner, a state prisoner proceeding pro se, has filed an amended petition for
17	writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 24, 2011, respondent filed the
18	pending motion to dismiss, arguing that the amended petition should be dismissed because the
19	claims set forth therein are procedurally barred. Petitioner has filed an opposition to the motion.
20	THE PETITION
21	On November 20, 2010, petitioner commenced this action by filing a petition for
22	writ of habeas corpus. On January 9, 2011, he filed an amended petition. In his amended
23	petition, petitioner challenges a prison rules violation report ("RVR") he received in 2005 for
24	engaging in mutual combat. Petitioner claims, inter alia, that there was no reliable evidence to
25	support the finding of prison officials that he was guilty of that prison disciplinary violation. In
26	terms of relief, petitioner seeks dismissal of the RVR. (Am. Pet. at 5-6 & 8.)
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RESPONDENT'S MOTION TO DISMISS

I. <u>Respondent's Motion</u>

Respondent moves to dismiss the pending petition, arguing that the claims set
forth therein are procedurally barred. Specifically, respondent argues that petitioner presented his
claim that his disciplinary conviction was unsupported by "some evidence" to the California
Supreme Court, but that court denied his petition as untimely and cited the decision in <u>In re</u>
<u>Robbins</u>, 18 Cal. 4th 770, 780 (1998). Because the California Supreme Court denied the petition
pursuant to an independent and adequate state law ground, respondent contends that this court
must dismiss the pending petition. (Resp't's Mot. to Dismiss at 5.)

10 II. <u>Petitioner's Opposition</u>

In opposition to respondent's motion to dismiss, petitioner argues only that federal
courts must review the record to determine whether the state court clearly erred in its application
of United States Supreme Court law. (Petn'r's Opp'n to Resp't's Mot. to Dismiss at 2-3.)

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ANALYSIS

15 "A federal habeas court will not review a claim rejected by a state court 'if the 16 decision of [the state] court rests on a state law ground that is independent of the federal question 17 and adequate to support the judgment." Walker v. Martin, U.S. , 131 S. Ct. 1120, 1127 (2011) (quoting <u>Beard v. Kindler</u>, 558 U.S. , , 130 S. Ct. 612, 615 (2009)). <u>See also</u> 18 19 Coleman v. Thompson, 501 U.S. 722, 729 (1991). California's time limitation requiring the 20 filing of petitions seeking habeas relief without "substantial delay" has now been found by the 21 U.S. Supreme Court to be an "independent" and "adequate" state law ground for purposes of the procedural default rule. Walker, 131 S. Ct. at 1128-30.¹ See also Alvarez v. Wong, No. 09-22

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¹ In <u>Bennett v. Mueller</u>, 322 F.3d 573 (9th Cir. 2003) the court held that California's untimeliness rule was an independent procedural ground for disposing of a habeas claim under the procedural default rule but remanded the matter for a determination as to the adequacy of the untimeliness rule to support procedural default in that case.

1 15547, 2011 WL 1252307 (9th Cir. Apr. 5, 2011)² ("[t]he Supreme Court recently held that 2 denial of habeas relief by the California Supreme Court on the ground that the application for relief was filed untimely was an independent an adequate state procedural ground requiring 3 denial of a subsequent habeas petition in federal court"); Lee v. Almager, No. CV 08-3248-4 5 PA(E), 2011 WL 2882148 at *7-8 (C.D. Cal. June 7, 2011) (finding federal habeas corpus claim procedurally barred because the California Supreme Court had denied it with a citation to In re 6 7 Robbins; "[t]he Walker Court rejected all arguments that California's timeliness rule was not firmly established and regularly followed"); Johnson v. Cullen, No. 3-98-cv-4043-SI, 2011 WL 8 9 2149313 (N.D. Cal. June 1, 2011) (finding the Walker holding directly applicable and striking all 10 claims found to be untimely by California Supreme Court); Taylor v. McDonald, Civil No. 10-11 cv-0177 MMA(BGS), 2011 WL 3021838 at *8-9 (S.D. Cal. Mar. 7, 2011) (finding federal habeas corpus claims procedurally barred because "[t]he Supreme Court held California's 12 13 untimeliness rule is 'adequate' for procedural default purposes when the petitioner subsequently presents for federal habeas relief the same claims that were rejected on untimeliness grounds in 14 15 state court.").

16 Here, the California Supreme Court denied petitioner's application for writ of 17 habeas corpus, citing the decision in In re Robbins, 18 Cal 4th at 880. (Am. Pet. Attach. at 12.) 18 Petitioner has not alleged any facts to cast doubt on the adequacy or application of California's 19 habeas time limitation rule in 2009. See Bennett v. Mueller, 322 F.3d 573, 586 (9th Cir. 2003); 20 Lee v. Almager, No. CV 08-3248-PA(E), 2011 WL 2882148 at *7 (C.D. Cal. June 7, 2011) 21 (even assuming arguendo that the Bennett burden shifting scheme applies after the decision in 22 Walker, petitioner had not met his interim burden of demonstrating the inadequacy of the 23 California timeliness bar). Petitioner also failed to assert that the California Supreme Court exercised its discretion in a "surprising or unfair" manner or in a way that "discriminates against 24

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² Citation to this unpublished decision is appropriate pursuant to Ninth Circuit Rule 36-3(b).

1	claims of federal rights" when it denied his state petition as untimely. See Walker, 131 S. Ct. at
2	1131. Finally, although petitioner can overcome a procedural default by demonstrating cause for
3	the default or actual prejudice, he has asserted no such arguments in this case. Nor has petitioner
4	demonstrated that this court's failure to consider his habeas claims will result in a fundamental
5	miscarriage of justice. See Bennett, 322 F.3d at 580. Accordingly, the court concludes that
6	federal habeas review of petitioner's claims is procedurally barred. ³
7	CONCLUSION
8	Accordingly, IT IS HEREBY RECOMMENDED that:
9	1. Respondent's motion to dismiss (Doc. No. 18) be granted; and
10	2. This action be closed.
11	These findings and recommendations are submitted to the United States District
12	Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty-
13	one days after being served with these findings and recommendations, any party may file written
14	objections with the court and serve a copy on all parties. Such a document should be captioned
15	"Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
16	shall be served and filed within seven days after service of the objections. The parties are
17	advised that failure to file objections within the specified time may waive the right to appeal the
18	District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
19	In any objections he elects to file, petitioner may address whether a certificate of
20	appealability should issue in the event he files an appeal of the judgment in this case. See Rule
21	11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a
22	certificate of appealability when it enters a final order adverse to the applicant); Hayward v.
23	Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc) (prisoners are required to obtain a certificate of
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25	³ The parties have also briefed the issues of whether the pending federal petition is timely and whether it states a cognizable claim for federal habeas corpus relief. In light of the

and whether it states a cognizable claim for federal habeas corpus relief. In light of the recommendation set forth above, the court will not reach the merits of those arguments.

1	appealability to review the denial of a habeas petition challenging an administrative decision
2	such as the denial of parole by the Board), <u>abrogated on other grounds</u> in <u>Swarthout v. Cooke</u> ,
3	562 U.S, 131 S. Ct. 859 (2011).
4	DATED: September 6, 2011.
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6	Dale A. Dage DALE A. DROZD
7	UNITED STATES MAGISTRATE JUDGE
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