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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID T. AN,
Petitioner,
v.
D. BAUGHMAN,
Respondent.

No. 2:16-cv-2657 KJM DB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. In an order filed June 27, 2017, the court dismissed the petition and gave petitioner thirty days to file an amended petition. (ECF No. 11.) On August 28, 2017, the court granted petitioner’s request for an extension of time to file an amended petition. (ECF No. 13.) The amended petition was due on October 13, 2017.


The due date for the amended petition has passed and petitioner has not filed an amended petition or otherwise responded to the court’s August 28 order. In the June 27 order, petitioner was warned that his failure to file an amended petition may result in dismissal of this action.

Accordingly, IT IS HEREBY RECOMMENDED that the petition be dismissed without prejudice for failure to comply with court orders and failure to prosecute this action. See E.D. Cal. R. 110; Fed. R. Civ. P. 41(b).

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1 These findings and recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
3 after being served with these findings and recommendations, petitioner may file written
4 objections with the court. The document should be captioned “Objections to Magistrate Judge's
5 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
6 specified time may result in waiver of the right to appeal the district court’s order. Martinez v.
7 Ylst, 951 F.2d 1153 (9th Cir. 1991). In his objections petitioner may address whether a certificate
8 of appealability should issue in the event he files an appeal of the judgment in this case. See Rule
9 11, Rules Governing § 2254 Cases (the district court must issue or deny a certificate of
10 appealability when it enters a final order adverse to the applicant).

11 Dated: October 30, 2017

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15 DEBORAH BARNES
16 UNITED STATES MAGISTRATE JUDGE

16 DLB:9
17 DLB1/prisoner-habeas/an2657.fr