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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS, Jr.,
Petitioner,
v.
SCOTT KERNAN,
Respondent.

No. 2:17-cv-2276-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 5, 2018, the court summarily dismissed petitioner’s application for a writ of habeas corpus pursuant to Rule 4 of the Rules Governing Section 2254 Cases. ECF No. 11. The order granted petitioner leave to amend within thirty days and warned petitioner that failure to comply would result in a recommendation that this action be dismissed. *Id.* The time for acting has passed and petitioner has not filed an amended petition or otherwise responded to the court’s order.¹

A party’s failure to comply with any order or with the Local Rules “may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” E.D. Cal. Local Rule 110. The court may dismiss an action with or without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v.*

¹ Petitioner has also failed to pay the \$5.00 filing fee as directed in the court’s October 5, 2018 order.

1 *Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse discretion in
2 dismissing pro se plaintiff's complaint for failing to obey an order to re-file an amended
3 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,
4 1440-41 (9th Cir. 1988) (dismissal for pro se plaintiff's failure to comply with local rule
5 regarding notice of change of address affirmed).

6 Accordingly, it is hereby ORDERED that the Clerk is directed to randomly assign a
7 United States District Judge to this case.

8 Further, it is hereby RECOMMENDED that this action be DISMISSED.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
14 shall be served and filed within fourteen days after service of the objections. Failure to file
15 objections within the specified time may waive the right to appeal the District Court's order.
16 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
17 1991). In his objections petitioner may address whether a certificate of appealability should issue
18 in the event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing Section
19 2254 Cases in the United States District Courts (the district court must issue or deny a certificate
20 of appealability when it enters a final order adverse to the applicant).

21 DATED: November 8, 2018.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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