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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-MCE-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 denied petitioner’s application for leave to proceed in forma pauperis and ordered petitioner to pay the filing fee. ECF No. 11. The court also dismissed the petition, identified its deficiencies, and granted petitioner leave to amend within thirty days. *Id.* The order warned petitioner that failure to comply would result in a recommendation that this action be dismissed. *Id.*

On November 9, 2018, the court issued an order stating that the time for acting had passed and recommending that this action be dismissed because petitioner had neither filed an amended petition nor paid the filing fee. ECF No. 13. That same day, petitioner’s timely-filed amended petition appeared on the court’s docket.¹ ECF No. 14. Therefore, the November 9, 2018

¹ Petitioner subsequently filed a second amended petition. ECF No. 15.

1 findings and recommendations are withdrawn in light of petitioner's filing of an amended
2 petition.

3 However, like the original petition, the amended petitions are largely incomprehensible
4 and do not cure the deficiencies identified by the court. *See* ECF Nos. 14 & 15. Moreover,
5 petitioner has yet to pay the filing fee for this action. Accordingly, dismissal of this action
6 remains appropriate.

7 A party's failure to comply with any order or with the Local Rules "may be grounds for
8 imposition by the Court of any and all sanctions authorized by statute or Rule or within the
9 inherent power of the Court." E.D. Cal. L.R. 110. The court may dismiss an action with or
10 without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v.*
11 *Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse discretion in
12 dismissing pro se plaintiff's complaint for failing to obey an order to re-file an amended
13 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,
14 1440-41 (9th Cir. 1988) (dismissal for pro se plaintiff's failure to comply with local rule
15 regarding notice of change of address affirmed).


16 Accordingly, it is hereby ORDERED the November 9, 2018 findings and
17 recommendations are withdrawn.

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

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
24 shall be served and filed within fourteen days after service of the objections. Failure to file
25 objections within the specified time may waive the right to appeal the District Court's order.
26 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
27 1991). In his objections petitioner may address whether a certificate of appealability should issue
28 in the event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing Section

1 2254 Cases in the United States District Courts (the district court must issue or deny a certificate
2 of appealability when it enters a final order adverse to the applicant).

3 DATED: January 28, 2019.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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