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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK RENE ROSILES,

 Petitioner,

 v.

AT&T Umbrella Benefit Plan No. 3,

 Respondent.

No. 2:17-cv-02600-KJM-GGH

ORDER

Petitioner filed his petition for writ of habeas corpus pro se on December 12, 2017. ECF No. 1. Respondent moved to dismiss on February 12, 2018, ECF No. 9, and petitioner opposed on May 21, 2018. ECF No. 16. On October 1, 2018 the magistrate judge to whom this matter was assigned filed and served Findings and Recommendations in which he granted the parties twenty-one (21) days from the issuance of the Order to file objections and warned that failure to do so could result in dismissal of the petition. ECF No. 20. No objections were filed.

The court presumes that any findings of fact are correct. See *Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See *Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court . . .”). Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

1 Under 11(a) of the Federal Rules Governing Section 2254 Cases, the court has
2 considered whether to issue a certificate of appealability. Before petitioner can appeal this
3 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
4 Where the petition is denied on the merits, a certificate of appealability may issue “only if the
5 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
6 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
7 satisfy the required showing or must state the reasons why such a certificate should not issue. *See*
8 Fed. R. App. P. 22(b). Where the petition is dismissed on procedural grounds, a certificate of
9 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
10 debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of
11 reason would find it debatable whether the petition states a valid claim of the denial of a
12 constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) *opinion recalled*
13 *and superseded on other grounds*, 273 F.3d 826 (9th Cir.2001) (quoting *Slack v. McDaniel*, 529
14 U.S. 473 (2000)). For the reasons set forth in the Magistrate Judge’s findings and
15 recommendations, the court finds that issuance of a certificate of appealability is not warranted in
16 this case.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The petition for writ of habeas corpus is dismissed without leave to amend
19 pursuant to Federal Rule of Civil Procedure 41(b);
- 20 2. No Certificate of Appealability shall be issued; and
- 21 3. The Clerk of the Court shall close this case.

22 IT IS SO ORDERED.

23 DATED: January 16, 2019.

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26 UNITED STATES DISTRICT JUDGE
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