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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE CORNEJO,
Petitioner,
v.
CHRISTIAN PFEIFFER,
Respondent.

No. 2:18-cv-0572-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California state prisoner who, proceeding through counsel, brings an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent moves to dismiss the petition as a “mixed petition,” or alternatively, to strike claims one and four from the petition as unexhausted. *See* ECF No. 12. Petitioner filed a response stating that he does not oppose respondent’s motion to strike unexhausted claims 1 and 4 of the petition and that he “is prepared to move forward with the exhausted claims in his petition for Writ of Habeas Corpus.” ECF No. 18. Given the parties’ agreement, it is recommend that respondent’s motion to strike be granted and that this habeas action proceed only on petitioner’s properly exhausted claims (claims two, three, and five).

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Respondent’s motion to strike unexhausted claims one and four (ECF No. 12) be granted;

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2. Claims one and four be dismissed as unexhausted;

3. Respondent be directed to file a response to petitioner’s habeas petition addressing the remaining, properly exhausted claims (claims two, three, and five) within sixty days from the date of any order adopting these findings and recommendations. *See* Rule 4, Rules Governing § 2254 Cases. An answer shall be accompanied by all transcripts and other documents relevant to the issues presented in the petition. *See* Rule 5, Fed. R. Governing § 2254 Cases; and

4. Petitioner be directed to file a reply, if any, within thirty days after service of the answer.

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

DATED: November 26, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE