

1 of law by the magistrate judge are reviewed de novo by both the district court and [the appellate]
2 court . . .”). Having reviewed the file, the court finds the findings and recommendations to be
3 supported by the record and by the proper analysis.

4 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the
5 Court has considered whether to issue a certificate of appealability. Before Petitioner can appeal
6 this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P.
7 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under
8 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
9 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
10 appealability indicating which issues satisfy the required showing or must state the reasons why
11 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
12 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that
13 jurists of reason would find it debatable whether the district court was correct in its procedural
14 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid
15 claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
16 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons
17 set forth in the Magistrate Judge’s findings and recommendations, the Court finds that issuance of
18 a certificate of appealability is not warranted in this case.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations filed December 1, 2021, are adopted in
21 full;
- 22 2. This action is dismissed without prejudice for lack of prosecution and
23 failure to comply with court rules and orders;
- 24 3. The Court declines to issue a certificate of appealability; and
- 25 4. The Clerk of the Court is directed to enter judgment and close this file.

26 DATED: January 7, 2022.

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28 CHIEF UNITED STATES DISTRICT JUDGE