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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTWON R. MONROE,	)	
	)	
Petitioner,	)	No. C 09-2665 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
EDMUND G. BROWN, JR., Attorney	)	
General,	)	
	)	
Respondent.	)	
_____	)	

Per order filed on November 24, 2010, the court granted respondent's motion to dismiss on the ground that petitioner had not exhausted his state judicial remedies as to two of his three claims for federal habeas relief under 28 U.S.C. § 2254. And pursuant to the law of the circuit, the court gave petitioner the option of either withdrawing his unexhausted claims and proceeding only on his exhausted claim, or of dismissing the entire mixed petition and returning to federal court with a new petition once all claims are exhausted. Nov. 24, 2010 Order at 2 (citing Jefferson v. Budge, 419 F.3d 1013, 1016 (9th Cir. 2005); Olvera v. Giurbino, 371 F.3d 569, 573 (9th Cir. 2004)).

The court specifically instructed petitioner as follows:

        Within 30 days of this order, petitioner shall inform the court in writing whether he wishes to (1) withdraw his unexhausted claims and proceed only on his exhausted claim, or (2) dismiss the entire mixed petition and return to federal court with a new petition once all claims are exhausted. Alternatively, petitioner may seek a

1 stay of these proceedings if he can show that there was good cause  
2 for his failure to exhaust his unexhausted claims in state court, and  
3 that the claims are potentially meritorious. See Rhines v. Webber,  
4 544 U.S. 269, 277 (2005). Failure to respond within the designated  
time will result in the dismissal of the entire mixed petition without  
prejudice to filing a new federal petition containing only exhausted  
claims.

5 Nov. 24, 2010 Order at 2-3.

6 More than 40 days have passed and petitioner has not filed a response or  
7 sought an extension of time to do so. The mixed petition accordingly will be  
8 DISMISSED without prejudice to filing a new federal petition containing only  
9 exhausted claims.

10 The clerk shall enter judgment in accordance with this order and close the  
11 file.

12 SO ORDERED.

13 DATED: Jan. 7, 2011

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16 CHARLES R. BREYER  
17 United States District Judge  
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