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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES EDWARD THOMAS,)	No. C 10-0591 LHK (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
MATTHEW C. KRAMER,)	
)	
Respondent.)	

Petitioner, a state prisoner proceeding *pro se*, filed an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 6, 2011, the Court granted Respondent’s motion to dismiss for failure to exhaust state remedies. On July 5, 2011, the Court denied Petitioner’s motions to stay because he did not qualify for a stay. The Court gave Petitioner an opportunity to decide whether he wanted to dismiss the unexhausted claim and go forward with only the exhausted ones, or dismiss the entire action and return to state court to exhaust all his claims before filing a new federal petition. The Court warned Petitioner that he must make his election by August 4, 2011, or face dismissal of the entire action.

On July 20, 2011, Petitioner filed a letter with the Court explaining why he initially chose to try to stay the action while he returned to state court to exhaust his claims. Petitioner made no attempt to elect one of the two options he had, and instead, informed the Court that he had filed a

1 petition in state court in an attempt to exhaust his unexhausted claim.

2 Out of an abundance of caution, on September 19, 2011, the Court sua sponte granted
3 Petitioner an extension of time to express his choice of whether he wanted to dismiss the
4 unexhausted claim and proceed with only the exhausted claims, or dismiss the entire action and
5 return to state court to exhaust all his claims before re-filing in federal court. The Court warned
6 Petitioner that, by October 11, 2011, he must choose one of the available options, or suffer
7 dismissal of this action.

8 To date, the Court has not received any further communication from Petitioner.
9 Accordingly, this action is DISMISSED without prejudice.

10 IT IS SO ORDERED.

11 DATED: 11/4/11


LUCY H. KOH
United States District Judge

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