

1 Court's conclusion that a certificate of appealability should not issue, the Court granted
2 Petitioner's motion to stay on October 28, 2011. [Doc. No. 24.] On November 15, 2011, the
3 United States Court of Appeals for the Ninth Circuit dismissed Petitioner's appeal for lack of
4 jurisdiction. [Doc. No. 26.] The same day, the Court lifted the stay and granted Petitioner twenty-
5 one days to comply with the terms and conditions set forth in the Court's September 21, 2011
6 Order. [Doc. No. 27.] The Court expressly advised Petitioner that if he did not file a notice of
7 withdrawal of his unexhausted claims (claims three through eight) within twenty-one days, the
8 Court would dismiss his entire federal habeas petition as mixed. [Doc. No. 27.]

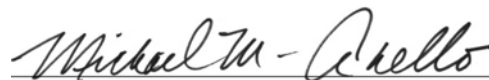
9 More than three months have passed, and Petitioner has not withdrawn his six unexhausted
10 claims as required by the Court's November 15 Order. Accordingly, the Court hereby
11 **DISMISSES** Petitioner's federal habeas petition without prejudice, in its entirety, as mixed.

12 **CERTIFICATE OF APPEALABILITY**

13 "The district court must issue or deny a certificate of appealability when it enters a final
14 order adverse to the applicant." Rule 11 foll. 28 U.S.C. § 2254. A petitioner may not seek an
15 appeal of a claim arising out of state court detention unless the petitioner first obtains a certificate
16 of appealability from a district judge or a circuit judge under 28 U.S.C. § 2253. Fed. R. App. P.
17 22(b). Under 28 U.S.C. § 2253(c)(1), a certificate of appealability will issue only if the petitioner
18 makes a substantial showing of the denial of a constitutional right. For the reasons set forth above,
19 Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly,
20 a certificate of appealability should not issue in this action.

21 **IT IS SO ORDERED.**

22 DATED: February 28, 2012



Hon. Michael M. Anello
United States District Judge