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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 LARRY DOUGLAS NIXON,

10 Petitioner,

11 v.

12 TIMOTHY WENGLER, et al.,

13 Respondents.

No. C09-5013 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING WRIT
OF HABEAS CORPUS AND
DISMISSING ACTION WITH
PREJUDICE

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15 This matter comes before the Court on the Report and Recommendation of the Magistrate
16 Judge that Petitioner's request for habeas corpus relief be denied and the petition be dismissed
17 with prejudice. The Petitioner has filed objections to the Report and Recommendation
18 contending that the Magistrate Judge's determination that Petitioner failed to exhaust is
19 erroneous.
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21 As detailed by the Magistrate Judge, Petitioner's first claim which alleges a due process
22 violation based on confusing jury instructions is unexhausted, Petitioner is procedurally barred
23 from returning to state court, and Petitioner cannot show cause and actual prejudice. Further,
24 regarding the merits of Petitioner's claim of lack of jury unanimity, the state court decisions are
25 not contrary to or an unreasonable application of clearly established federal law.
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ORDER ADOPTING REPORT AND RECOMMENDATION - 1

