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

IGNACIO PENA,

Petitioner,

No. CIV-S-10-1336 KJM CKD P

vs.

GARY SWARTHOUT,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus under 28 U.S.C. § 2254. On December 10, 2011, respondent filed a motion to dismiss. On July 11, 2011, petitioner was ordered to file an opposition or a statement of non-opposition to the pending motion within thirty days. In the same order, petitioner was informed that failure to file an opposition would result in a recommendation that this action be dismissed pursuant to Fed. R. Civ. P. 41(b). Petitioner has not responded to the court’s order.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” In his objections petitioner
3 may address whether a certificate of appealability should issue in the event he files an appeal of
4 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
5 court must issue or deny a certificate of appealability when it enters a final order adverse to the
6 applicant). Any reply to the objections shall be served and filed within fourteen days after
7 service of the objections. The parties are advised that failure to file objections within the
8 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
9 F.2d 1153 (9th Cir. 1991).

10 Dated: August 15, 2011

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13 CAROLYN K. DELANEY
14 UNITED STATES MAGISTRATE JUDGE

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