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

AUGUSTINE GARCIA,

Petitioner,

No. 2:12-cv-1636 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 August 28, 2012, respondent filed a motion to dismiss. On October 11, 2012, petitioner was ordered to file an opposition or a statement of non-opposition to the pending motion within thirty days. Plaintiff 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). The thirty day period has now expired and plaintiff has not responded to the court's order.

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

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 fourteen

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

11 Dated: November 20, 2012

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13 CAROLYN K. DELANEY
14 UNITED STATES MAGISTRATE JUDGE

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