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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY JONES,
Petitioner,
v.
UNKNOWN,
Respondent.

No. 2:14-cv-0591 JAM KJN P (TEMP)

FINDINGS & RECOMMENDATIONS

On March 3, 2014, petitioner, a state prisoner, filed a pro se statement with this court, which the Clerk of Court accepted and docketed as a motion to stay. In an abundance of caution, the Clerk opened a new case with the filing, classifying it as a habeas action.

On August 7, 2015, the court addressed the motion to stay, finding it “extremely vague” as to the petitioner’s purpose in filing it. (Order (ECF No. 7) at 1.) The court stated it was possible that petitioner meant to file a “protective petition” as that form of habeas pleading is known under Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005), but the motion was too unclear to reasonably construe it as such. (Id. at 1-2.) Instead, the court gave petitioner two options for proceeding with his case: (1) file a complete petition for writ of habeas corpus clearly stating what federal claims against his criminal conviction and sentence petitioner wishes to pursue and clarifying if his initial request for a stay is, in fact, a protective petition; or (2) if petitioner does not want to pursue any federal habeas claims at this time, file a notice of voluntary dismissal

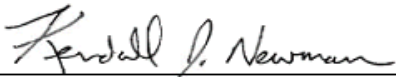
1 under Federal Rule of Civil Procedure 41(a)(1). (Id. at 2.) The court made it clear to the
2 petitioner that “if he does not follow one of the above options or otherwise respond to this order
3 within thirty days, the court will recommend his case be dismissed for failure to prosecute his
4 claims, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 110.” (Id.)

5 More than thirty days have passed since the court ordered plaintiff to inform the court of
6 his intentions with respect to this case, and petitioner has not responded to the court in any way.
7 Therefore the court recommends that this action be dismissed without prejudice for failure to
8 prosecute, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 110.

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
10 prejudice for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b) and Local
11 Rule 110, and that this case be closed.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
17 objections shall be filed and served within fourteen days after service of the objections. The
18 parties are advised that failure to file objections within the specified time may waive the right to
19 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: December 18, 2015

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22 _____
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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