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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

OSCAR GATES,	}	No. CV 13-6995-R (PLA)
Petitioner,	}	ORDER DISMISSING ACTION
v.	}	
THE WARDEN AT SAN QUENTIN,	}	
Respondent.	}	

18 Currently pending in the Central District of California is petitioner’s habeas action, CV 94-
19 2560-LGB (PLA) and CV 94-5484-LGB (PLA) (the “consolidated cases”), which has been stayed
20 pending resolution of further proceedings in petitioner’s federal capital habeas case in the District
21 Court for the Northern District of California. Petitioner is represented by counsel in the
22 consolidated cases. The parties have been filing periodic status reports updating the Court of
23 developments in the Northern District case. The most recent status report was filed on September
24 25, 2013.

25 On September 20, 2013, petitioner, proceeding pro se, filed with this Court a 66-page
26 declaration that he concludes with a “Prayer for Relief” seeking the issuance of the writ of habeas
27 corpus “which he originally petitioned before this Court . . . in (1982) and subsequently in (1994)
28 after numerous delays and obstacles [sic]” (the “declaration”). The declaration was construed by

1 the clerk's office as a new habeas petition and assigned Central District case number CV 13-6995-
2 R (PLA) (the "instant action."). In a subsequent letter to the Court dated September 25, 2013,
3 entitled "Motion for Corrections," petitioner explained that he intended to include docket numbers
4 CV 94-2560 and CV 94-5484 on his September 20, 2013, declaration (which he refers to in his
5 letter as a motion for summary judgment) and requests that docket number CV 13-6995 be
6 removed from the instant action, i.e., he intended to file the declaration in connection with the
7 consolidated action, and not as a new and separate proceeding.

8 The Magistrate Judge ordered that counsel for both petitioner and respondent in the
9 consolidated cases file their positions concerning the impact of petitioner's declaration in the
10 instant action on the consolidated cases. They did so on October 9, 2013, and concur with
11 petitioner that the declaration was misfiled as a new habeas action, and was intended by petitioner
12 to be a summary judgment motion in the consolidated cases.

13 Accordingly, it is **ordered** that petitioner's Motion for Corrections (docket no. 5) is **granted**,
14 this action is **dismissed**, and the declaration construed herein as a new habeas petition shall be
15 **filed** in case numbers CV 94-2560 and CV 94-5484.

16 **It is so ordered.**

17
18 DATED: October 15, 2013



HON. MANUEL REAL
UNITED STATES DISTRICT JUDGE