

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 17-3461-JVS (KS) Date: September 20, 2017

Title Mark Vincent Straus v. Shawn Hatton

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Roxanne Horan-Walker

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL

On May 8, 2017, Petitioner, a California state prisoner proceeding *pro se*, filed a Petition For Writ Of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254 challenging his 1998 conviction and sentence. (Dkt. No. 1.) On May 16, 2017, the Court issued an Order to Show Cause why the action should not be dismissed as untimely and ordered Petitioner to file, no later than June 15, 2017, a First Amended Petition that, *inter alia*, included specific factual allegations demonstrating that either the Petition was timely under 28 U.S.C. 2244(d)(1) or that Petitioner diligently pursued his rights but was prevented from timely filing the Petition by an extraordinary circumstance. (Dkt. No. 3.)

Petitioner sought and received two extensions of time to comply with the Court’s May 16, 2017 Order, ultimately extending his deadline for filing a First Amended Petition to August 27, 2017. (Dkt. Nos. 6, 7, 8, 9.) However, more than two weeks have now passed since Petitioner’s First Amended Petition was due, and Petitioner has neither filed the First Amended Petition nor otherwise communicated with the Court about his case. Accordingly, the action is now subject to dismissal under Rule 41(b) of the Federal Rules of Civil Procedure. However, in the interests of justice, Petitioner shall receive one final opportunity to file a First Amended Petition. Accordingly, **IT IS HEREBY ORDERED that, no later than October 10, 2017, Petitioner shall file either:**

- (1) a First Amended Petition that complies with the Court’s May 16, 2017 Order; or
- (2) a signed application for an enlargement of time and competent evidence, such as a declaration signed under penalty of perjury, demonstrating good cause for such an extension

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Alternatively, if Petitioner does not wish to proceed with this action at this time, he may file a signed document entitled “Notice Of Voluntary Dismissal” and the action will be dismissed without prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Petitioner is advised that his failure to timely comply with this Order will result in a recommendation to dismiss this case for failure to prosecute and comply with court orders pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Local Rule 41-1.

IT IS SO ORDERED.

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