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8	UNITED STAT	TES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA		
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11	GREGORY ELL SHEHEE,	) Case No.: 1:12-cv-01395-AWI-JLT	
12	Petitioner,	) ) ORDER WITHDRAWING FINDINGS &	
13	v.	) RECOMMENDATION (Doc. 15)	
14	AUDREY KING, Warden,	<ul> <li>ORDER REQUIRING RESPONDENT TO FILE A</li> <li>RESPONSE</li> </ul>	
15	Respondent.	)	
16		) ORDER SETTING BRIEFING SCHEDULE	
17 18		<ul> <li>ORDER DIRECTING CLERK OF COURT TO</li> <li>SERVE DOCUMENTS ON ATTORNEY</li> <li>GENERAL</li> </ul>	
19	The findings and recommendation, dat	ed November 21, 2012, is order <b>WITHDRAWN</b> . (Doc.	
20	15)		
21	The Court has conducted a preliminary	v review of the Petition. It is not clear from the face of	
22	the Petition whether Petitioner is entitled to relief. 28 U.S.C. § 2243. Accordingly, pursuant to Rule 4		
23	of the Rules Governing Section 2254 Cases and Rule 16 of the Federal Rules of Civil Procedure, <sup>1</sup> the		
24	Court HEREBY ORDERS:		
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27	<sup>1</sup> The Federal Rules of Civil Procedure "apply to proceedings for habeas corpus to the extent that the practice in thos proceedings (A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governin Section 2255 Cases; and (B) has previously conformed to the practice in civil actions." Fed.R.Civ.P. 81(a)(4). Rule 1 also provides "[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutor provisions or these rules, may be applied to a proceeding under these rules." Rule 12, Rules Governing Section 2255 Cases.		
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1	1.	Respondent SHALL FILE a RESPONSE to the Petition <sup>12</sup> within 60 days of the date of	
2		service of this order. See Rule 4, Rules Governing Section 2254 Cases; Cluchette v.	
3		Rushen, 770 F.2d 1469, 1473-1474 (9th Cir. 1985)(court has discretion to fix time for	
4		filing a response). A Response can be made by filing one of the following:	
5		A. AN ANSWER addressing the merits of the Petition. Respondent SHALL	
6		INCLUDE with the Answer any and all transcripts or other documents necessary	
7		for the resolution of the issues presented in the Petition. See Rule 5, Rules	
8		Governing Section 2254 Cases. Any argument by Respondent that Petitioner has	
9		procedurally defaulted a claim SHALL BE MADE in the ANSWER, but must also	
10		address the merits of the claim asserted.	
11		B. A MOTION TO DISMISS the Petition. A Motion to Dismiss SHALL INCLUDE	
12		copies of all Petitioner's state court filings and dispositive rulings. See Rule 5,	
13		Rules Governing Section 2254 Cases. <sup>3</sup>	
14	2.	If Respondent files an Answer to the Petition, Petitioner MAY FILE a Traverse within	
15		30 days of the date Respondent's Answer is filed with the Court. If no Traverse is	
16		filed, the Petition and Answer are deemed submitted at the expiration of the thirty days.	
17	3.	If Respondent files a Motion to Dismiss, Petitioner SHALL FILE an Opposition or	
18		Statement of Non-Opposition within 21 days of the date Respondent's Motion is filed	
19		with the Court. If no Opposition is filed, the Motion to Dismiss is deemed submitted at	
20		the expiration of the thirty days. Any Reply to an Opposition to the Motion to Dismiss	
21		SHALL be filed within 7 days after the Opposition is served.	
22	4.	Unless already submitted, both Respondent and Petitioner SHALL COMPLETE and	
23		RETURN to the Court within 30 days a Consent/Decline form indicating whether the	
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25	<sup>2</sup> Respondent is advised that a scanned copy of the Petition is available in the Court's electronic case filing system		
26	("CM/ECF"). <sup>3</sup> Rule 4 of the Rules Governing Section 2254 Cases provides that upon the Court's determination that summary dismissal		
27	is inappropriate, the "judge must order the respondent to file an answer or <i>other pleading…or to take other action the judge may order.</i> " Rule 4, Rules Governing 2254 Cases (emphasis added); see also Advisory Committee Notes to Rules 4 and 5		
20	of Rules Governing Section 2254 Cases (stating that a dismissal may obviate the need for filing an answer on the substantive merits of the petition and that the Attorney General may file a Motion to Dismiss for failure to exhaust); White		

<sup>28</sup> substantive merits of the petition and that the Attorney General may file a Motion to Dismiss for failure to exhaust); <u>White</u> <u>v. Lewis</u>, 874 F.2d 599, 602-603 (9<sup>th</sup> Cir. 1989)(providing that Motions to Dismiss pursuant to Rule 4 are proper in a federal habeas proceeding).

1	party consents or declines to consent to the jurisdiction of the United States Magistrate		
2	Judge pursuant to Title 28 U.S.C. § 636(c)(1).		
3	5. The Clerk of the Court is DIRECTED to SERVE a copy of this order on the Attorney		
4	General or his or her representative.		
5	All motions shall be submitted on the record and briefs filed without oral argument unless		
6	otherwise ordered by the Court. Local Rule 230(1). Extensions of time will only be granted upon a		
7	showing of good cause. All provisions of Local Rule 110 are applicable to this order.		
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9	IT IS SO ORDERED.		
10	Dated: March 2, 2015 /s/ Jennifer L. Thurston		
11	UNITED STATES MAGISTRATE JUDGE		
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