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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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10 LUIS CALDERON,

11 Petitioner,

12 v.

13 FREDERIC FOULKS,

14 Respondent.

Case No. 1:16-cv-00276-LJO-SAB-HC

ORDER DISCHARGING ORDER TO  
SHOW CAUSE AND VACATING  
SEPTEMBER 12, 2017 FINDINGS AND  
RECOMMENDATION

NOTICE THAT MONETARY SANCTIONS  
WILL ISSUE FOR FUTURE FAILURES TO  
RESPOND TO COURT ORDERS

(ECF Nos. 27, 28)

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17 Petitioner is a state prisoner, represented by counsel, proceeding with a petition for writ  
18 of habeas corpus pursuant to 28 U.S.C. § 2254.

19 On August 16, 2016, the Court stayed the federal habeas proceedings pending exhaustion  
20 of state remedies and ordered Petitioner to file an initial status report within thirty days of the  
21 date of service of the order and every ninety days thereafter. (ECF No. 18). As Petitioner did not  
22 file a status report within the required time period, the Court issued a third order to show cause<sup>1</sup>  
23 why the stay should not be vacated on August 31, 2017. (ECF No. 27). Petitioner did not respond  
24 to the order to show cause, and the undersigned issued findings and recommendation<sup>2</sup> to vacate  
25 the stay on September 12, 2017. (ECF No. 28).

26 <sup>1</sup> The Court previously issued orders to show cause for counsel's failure to timely file status reports on September  
27 29, 2016, and April 26, 2017. (ECF Nos. 19, 23).

28 <sup>2</sup> The undersigned previously issued findings and recommendation to vacate the stay based on Petitioner's failure to  
respond to the April 26, 2017 order to show cause. (ECF No. 24).

1 On September 19, 2017, Petitioner filed objections to the findings and recommendation.  
2 (ECF No. 29). Counsel explained that at the time he received notification of the order to show  
3 cause he was in the middle of a murder trial. Further, counsel was trailing trial in two cases, one  
4 of which was estimated to take forty-five days. (Id. at 1–2). Counsel also provided a status report  
5 on the state court proceedings. (ECF No. 30).

6 In this instance, the Court shall discharge the order to show cause and vacate the findings  
7 and recommendation. However, counsel for Petitioner is advised that orders are not mere  
8 suggestions to which the party may choose to respond. When the Court issues an order requiring  
9 an act by a date certain, the party is required to act. Counsel Gregory Henrick Mitts is hereby  
10 provided with notice that should there be future failures to respond to orders of this Court,  
11 monetary sanctions will issue without further notice.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The order to show cause issued on August 31, 2017 (ECF No. 28) is DISCHARGED;
- 14 2. The findings and recommendation issued on September 12, 2017 (ECF No. 28) is  
15 VACATED; and
- 16 3. Petitioner is DIRECTED to file a status report within NINETY (90) days of the date of  
17 service of this order, and then every NINETY (90) days thereafter, in accordance with the  
18 Court’s previous order (ECF No. 18).
- 19 4. Counsel Gregory Henrick Mitts is advised that future failures to respond to orders of this  
20 Court will result in the issuance of monetary sanctions. This shall constitute prior notice  
21 for the imposition of future monetary sanctions for failure to comply with orders of this  
22 Court.

23 IT IS SO ORDERED.

24 Dated: September 21, 2017

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27 UNITED STATES MAGISTRATE JUDGE  
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