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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LUIS CALDERON,

Petitioner,

v.

FREDERIC FOULKS,

Respondent.

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

**ORDER REQUIRING GREGORY
HENRICK MITTS TO PERSONALLY
APPEAR ON MAY 9, 2018, AT 10:00 A.M.
IN COURTROOM 9**

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

On August 16, 2016, the Court stayed the instant federal habeas proceedings pending exhaustion of state remedies and ordered Petitioner to file an initial status report within thirty days of the date of service of the order and every ninety days thereafter. (ECF No. 18). As Petitioner did not file a status report within the required time period, the Court issued a third order to show cause¹ why the stay should not be vacated on August 31, 2017. (ECF No. 27). Petitioner did not respond to the order to show cause, and the undersigned issued findings and recommendation² to vacate the stay on September 12, 2017. (ECF No. 28).

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

² 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 On September 22, 2017, the Court discharged the order to show cause, vacated the
7 findings and recommendation, and directed Petitioner to file a status report within ninety days
8 and every ninety days thereafter. (ECF No. 31). The undersigned also advised counsel “that
9 future failures to respond to orders of this Court will result in the issuance of monetary sanctions.
10 This shall constitute prior notice for the imposition of future monetary sanctions for failure to
11 comply with orders of this Court.” (Id. at 2).

12 In compliance with the Court’s order, Petitioner filed a status report within ninety days
13 on December 15, 2017. (ECF No. 32). However, Petitioner failed to file a status report within
14 ninety days thereafter, and the undersigned issued a fourth order to show cause why the stay
15 should not be vacated. (ECF No. 33). On April 9, 2018, four days after a response was due,
16 counsel for Petitioner requested an extension of time to file a response to the order to show
17 cause. (ECF No. 34). The Court granted the extension and ordered counsel for Petitioner to file a
18 response to the order to show cause no later than April 17, 2018. (ECF No. 35). To date, counsel
19 has not filed a response to the order to show cause, and the time for doing so has passed.

20 “Failure of counsel or of a party to comply with these Rules or with any order of the
21 Court may be grounds for imposition by the Court of any and all sanctions authorized by statute
22 or Rule or within the inherent power of the Court.” Local Rule 110. The Court previously
23 notified Petitioner that not complying with the Court’s orders would result in the Court vacating
24 the stay. (ECF No. 18 at 2). The Court also previously notified Petitioner’s counsel that “future
25 failures to respond to orders of this Court will result in the issuance of monetary sanctions.”
26 (ECF No. 31 at 2). The Court has the inherent power to control its docket and may, in the
27 exercise of that power, impose sanctions where appropriate, including dismissal of the action.
28 Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000).

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Accordingly, IT IS HEREBY ORDERED that Petitioner’s counsel, Gregory Henrick Mitts, shall **personally appear** before United States Magistrate Judge Stanley A. Boone, at the United States Courthouse, 2500 Tulare St., Fresno, California, Courtroom 9, on **Wednesday, May 9, 2018, at 10:00 a.m.** to show cause why sanctions should not be imposed for the failure to comply with court orders.

IT IS SO ORDERED.

Dated: April 24, 2018


UNITED STATES MAGISTRATE JUDGE