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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY W. STARLING,
Petitioner,
v.
D. ASUNCION, Warden
Respondent.

Case No. 1:17-cv-00216-LJO-MJS (HC)

**ORDER REQUIRING RESPONDENT TO RE-
SERVE MOTION TO DISMISS ON
PETITIONER WITHIN SEVEN DAYS**

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Respondent D. Asuncion, Warden of California State Prison, Los Angeles County, is represented by Justain P. Riley of the Office of the California Attorney General.

On April 6, 2017, Respondent filed a motion to dismiss the petitions as time-barred and partially unexhausted. (ECF No. 11.) Petitioner filed no opposition and, on May 17, 2017, the undersigned issued findings and recommendations to grant the motion to dismiss. (ECF No. 14.) In his objections to the findings and recommendations, Petitioner states that he never received the motion to dismiss. (ECF No. 15.)

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The motion to dismiss includes a certificate of service indicating it was served on Petitioner at his current institution on April 6, 2017. Nevertheless, the Court concludes that the motion should be re-served on Petitioner and Petitioner should have an opportunity to respond.

Based on the foregoing, it is HEREBY ORDERED that:

1. Within seven (7) days of the date of service of this order, Respondent shall re-serve the motion to dismiss on Petitioner;
2. Petitioner shall file an opposition or statement of non-opposition on or before August 10, 2017; and
3. Any reply shall be filed within seven (7) days after the opposition is served.

IT IS SO ORDERED.

Dated: July 11, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE