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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIA ANTONIA FRANCO,
Petitioner,
v.
JANEL ESPINOZA, Warden,
Respondent.

No. 1:18-cv-00057-DAD-SKO (HC)

**ORDER WITHDRAWING FINDINGS AND
RECOMMENDATIONS FOR DISMISSAL
OF THE PETITION FOR FAILURE TO
PROSECUTE**

(Doc. 15)

Petitioner, Maria Antonia Franco, is a state prisoner proceeding with counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred the matter to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On January 25, 2018, the undersigned stayed proceedings in the case pursuant to *Rhines v. Weber*, 544 U.S. 269, 275 (1995), to permit Petitioner to exhaust certain claims in state court. (Doc. 16.) The order directed Petitioner to file, within 30 days of the California Supreme Court's issuing a final order resolving her claims, a motion to lift the stay and an amended petition setting forth all exhausted claims.

1 On October 9, 2018, Petitioner notified the Court that on September 19, 2018, the California
2 Supreme Court denied review of her petition. Although more than thirty days passed after the
3 California Supreme Court issued a final order, Petitioner did not file a motion to lift the stay and
4 an amended petition.

5 On October 23, 2018, the undersigned ordered Petitioner to show cause within fifteen days
6 why her petition should not be dismissed for failure to obey the Court's order filed January 25,
7 2018. More than fifteen days passed and Petitioner failed to respond to the undersigned's order to
8 show cause. On November 13, 2018, the undersigned filed findings and recommendations in which
9 she recommended the Court dismiss Petitioner's petition for failure to prosecute.

10 On November 12, 2018, Petitioner, through counsel, filed an amended petition for writ of
11 habeas corpus. Although the petition is late, the undersigned will accept it as a response to the
12 Order to Show Cause. The Court will screen the petition in due course.

13 Accordingly, the undersigned hereby WITHDRAWS the findings and recommendations
14 filed November 13, 2018.

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18 IT IS SO ORDERED.

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20 Dated: November 14, 2018

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE