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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ABELINO G. NUNEZ,

Petitioner,

No. CIV S-09-0926 DAD

vs.

JOHN MARSHALL,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

By order filed April 30, 2009, petitioner’s habeas petition was dismissed and thirty days leave to file an amended petition was granted. On June 15, 2009, petitioner was granted an additional thirty days to file an amended petition. On July 30, 2009, petitioner was granted one final thirty-day extension of time to file an amended petition and was cautioned that failure to do so would result in dismissal of the action. The entire time period has now expired, and petitioner has not filed an amended application or otherwise responded to the court’s order.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly assign a United States District Judge to this action;

IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 11-110; Fed. R. Civ. P. 41(b).

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1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
3 days after being served with these findings and recommendations, petitioner may file written
4 objections with the court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendations." Petitioner is advised that failure to file objections within the
6 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
7 F.2d 1153 (9th Cir. 1991).

8 DATED: September 17, 2009.

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11 _____
12 DALE A. DROZD
13 UNITED STATES MAGISTRATE JUDGE

12 DAD:lg
13 nunc0926.fta