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

MARIO FLAVIO GARCIA,

Petitioner,

No. CIV S-10-0968 GEB DAD P

vs.

KEN CLARK, Warden,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 28, 2011, the Magistrate Judge assigned to this case issued an order and findings and recommendations which granted petitioner’s motion to substitute the correct respondent in this action, denied petitioner’s motion for judicial notice, and recommended that petitioner’s March 21, 2011 motion for leave to amend and his June 29, 2011 motion to amend be denied. Petitioner was advised that objections to the findings and recommendations could be filed within twenty-one days. On January 20, 2012, petitioner was granted an extension of time until February 27, 2012 to file his objections. Petitioner did not file objections to the findings and recommendations. On March 1, 2012, the undersigned issued an order adopting the December 28, 2011 findings and recommendations and denying petitioner’s March 21, 2011 motion for leave to amend and his June 29, 2011 motion to amend.

1           On March 2, 2012, petitioner filed objections to the December 28, 2011 findings  
2 and recommendations and a document entitled “Motion for Acceptance of late filing of  
3 Objections.” In the motion, petitioner explains that he mailed his objections to this court in a  
4 timely manner but the post office damaged the document and sent it back to him on  
5 approximately February 29, 2012. Petitioner states that he immediately mailed the objections  
6 back to this court.<sup>1</sup>

7           On March 14, 2012, petitioner filed a motion for reconsideration of this court’s  
8 March 1, 2012 order. Therein, petitioner explains that his objections to the December 28, 2011  
9 findings and recommendations were filed late “through no fault of his own.” He requests that the  
10 March 1, 2012 order be “reversed” and that this court consider his objections to the findings and  
11 recommendations. On May 29, 2012, petitioner filed another motion for reconsideration of the  
12 March 1, 2012 order.

13           This court has now considered petitioner’s March 2, 2012 objections to the  
14 December 28, 2011 findings and recommendations and, in accordance with the provisions of 28  
15 U.S.C. § 636(b)(1)(C) and Local Rule 304, has conducted a de novo review of this case. Having  
16 carefully reviewed the entire file, the court finds the findings and recommendations to be  
17 supported by the record and by proper analysis.

18           Accordingly, IT IS HEREBY ORDERED that:

- 19           1. The March 1, 2012 order issued by this court (Dckt. No. 82) is vacated;  
20           2. Petitioner’s March 14, 2012 motion for reconsideration (Dckt. No. 91) is  
21 denied as unnecessary;  
22           3. Petitioner’s May 29, 2012 motion for reconsideration (Dckt. No. 103) is denied  
23 as unnecessary;

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26           <sup>1</sup> Also on March 2, 2012, petitioner filed a notice of appeal of the March 1, 2012 order.  
On May 10, 2012, the Court of Appeals for the Ninth Circuit dismissed that appeal for lack of  
jurisdiction.

1                   4. Petitioner's March 2, 2012 motion for acceptance of late filing of objections  
2 (Dckt. No. 83) is granted;

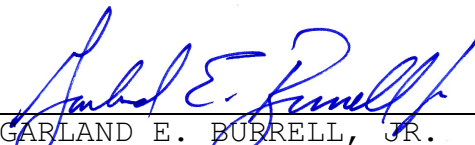
3                   5. The findings and recommendations filed December 28, 2011, are adopted in  
4 full;

5                   6. Petitioner's March 21, 2011 motion to amend (Doc. No. 53) is denied;

6                   7. Petitioner's June 29, 2011 motion to amend (Doc. No. 70) is denied; and

7                   8. For the reasons set forth in the December 28, 2011 findings and  
8 recommendations, the court declines to issue a certificate of appealability.

9 Dated: June 13, 2012

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GARLAND E. BURRELL, JR.  
United States District Judge

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