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

ELIGIO CERVANTES,

Petitioner,

No. CIV-S-10-3107 CKD P

vs.

STATE OF CALIFORNIA,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /
Petitioner is a California civil detainee proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. On February 8, 2011, the court dismissed petitioner’s original petition because petitioner challenged a Lassen County conviction for child molestation and the fact that he has been civilly committed under California’s Sexually Violent Predators Act (Cal. Welf. & Inst. Code § 6000 *et seq.*) despite the fact that Rule 2(e) of the Rules Governing Section 2254 Cases permits habeas petitioners to challenge only one judgment of one state court per habeas petition. Petitioner was granted leave to submit an amended petition to challenge his Lassen County conviction for child molestation or his commitment under California’s Sexually Violent Predators Act, but not both. Petitioner was warned that failure to file an amended petition in compliance with February 8, 2011 order would result in a recommendation that this action be dismissed.

1 On February 22, 2011, petitioner filed an amended habeas petition in which he,
2 again, challenges his Lassen County conviction and his civil commitment. Because petitioner
3 has failed to comply with Rule 2(e) of the Rules Governing Section 2254 Cases and the February
4 8, 2011 order of this court, the court will recommend that this action be dismissed without
5 prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a
7 district court judge to this case; and

8 IT IS HEREBY RECOMMENDED that this action be dismissed without
9 prejudice.

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

17 DATED: August 2, 2011

/s/ Carolyn K. Delaney

United States Magistrate Judge

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