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| 8 | IN THE UNITED STATES DISTRICT COURT |
| 9 | FOR THE EASTERN DISTRICT OF CALIFORNIA |
| 10 | LAWRENCE P. CARDOZA, |
| 11 | Petitioner, No. 2:12-cv-0171 CKD P |
| 12 | VS. |
| 13 | CONNIE GIPSON, <u>ORDER</u> |
| 14 | Respondent. |
| 15 | |
| 16 | In light of recent Ninth Circuit case law, respondent seeks to withdraw the March |
| 17 | 30, 2012 motion to dismiss the petition on the ground that it contains an unexhausted claim. |
| 18 | (Dkt. No. 16.) See Cross v. Sisto, F.3d, 2012 WL 1322029 (9th Cir. 2012) (holding that |
| 19 | district court did not correctly apply California law in determining that state supreme court's |
| 20 | denial of habeas petition with citations to Ex Parte Swain, 34 Cal. 2d 300 (1949) and People v. |
| 21 | <u>Duvall</u> , 9 Cal. 4th 464 (1995) was a denial for untimeliness.) |
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(HC) Cardoza v. Gipson

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Good cause appearing, IT IS HEREBY ORDERED THAT:

- 1. Respondent's March 30, 2012 motion to dismiss (Dkt. No. 9) is withdrawn; and
- 2. Respondent is granted thirty days from the date of service of this order to file an answer to the petition. Petitioner's reply, if any, shall be filed no later than thirty days after service of the answer.

Dated: May 31, 2012

CAROLYN K. DELANEY

UNITED STATES MAGISTRATE JUDGE

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