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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOUGLAS DWAYNE GIRLEY,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:12-cv-1938 KJM KJN P

ORDER

On May 20, 2013, respondent was directed to inform the court whether he would withdraw the motion to dismiss or file a reply to petitioner’s objections to the March 26, 2013 findings and recommendations. On May 31, 2013, respondent filed a request to withdraw the motion to dismiss and issue a briefing schedule.

Because petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent’s request is granted. The motion is deemed withdrawn, the findings and recommendations are vacated, and a briefing schedule is issued. .

In accordance with the above, IT IS HEREBY ORDERED that:

1. Respondent’s request to withdraw the motion to dismiss (ECF No. 23) is granted;
2. The October 19, 2012 motion to dismiss (ECF No. 12) is withdrawn;
3. The March 26, 2013 findings and recommendations (ECF No. 20) are vacated;

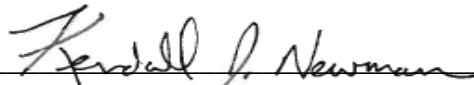
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4. Respondent is directed to file a response to petitioner's habeas petition within thirty days from the date of this order. See Rule 4, 28 U.S.C. foll. § 2254. An answer shall be accompanied by all transcripts and other documents relevant to the issues presented in the petition. See Rule 5, 28 U.S.C. foll. § 2254; and

5. Petitioner's reply, if any, shall be filed and served within thirty days after service of the answer.

Date: 6/10/2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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