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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NAHU RODRIGUEZ,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:14-cv-2812 TLN CKD P

FINDINGS AND RECOMENDATIONS

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 6, 2015, respondent filed a motion to dismiss. On May 19, 2015, the court ordered petitioner to file an opposition to the motion and petitioner was warned that failure to do so would result in dismissal under Rule 41(b) of the Federal Rules of Civil Procedure. Petitioner has not filed an opposition to the motion and the time for filing an opposition has expired.

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

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to

1 Magistrate Judge's Findings and Recommendations." In his objections petitioner may address
2 whether a certificate of appealability should issue in the event he files an appeal of the judgment
3 in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must
4 issue or deny a certificate of appealability when it enters a final order adverse to the applicant).
5 Any response to the objections shall be served and filed within fourteen days after service of the
6 objections. The parties are advised that failure to file objections within the specified time may
7 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
8 1991).

9 Dated: September 14, 2015



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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