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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT M. HUNT,
Petitioner,
v.
DEBBIE ASUNCION,
Respondent.

No. 2:15cv-2636 TLN GGH P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 10, 2016, petitioner was ordered to show cause, within thirty days, why respondent’s February 9, 2016 motion to dismiss should not be granted. At that time, petitioner was warned that failure to file an opposition would result in a recommendation that this action be dismissed. The thirty day period has now expired, and petitioner has not shown cause or otherwise responded to the court’s order. In addition, the court has reviewed the motion to dismiss as duplicative of another habeas action pending in this court, Hunt v. Soto, 2:16-cv-0075 EFB. The court finds that on the face of it, the motion has merit. Petitioner’s previously filed habeas action does indeed raise the same claims and this action appears to be a duplicate of the first action.

Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must

1 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A
2 certificate of appealability may issue only “if the applicant has made a substantial showing of the
3 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in these
4 findings and recommendations, a substantial showing of the denial of a constitutional right has
5 not been made in this case.

6 Accordingly, IT IS HEREBY RECOMMENDED that:

- 7 1. Respondent’s motion to dismiss, filed February 9, 2016 (ECF No. 7), be granted;
- 8 2. This case be closed; and
- 9 3. The District Court decline to issue a certificate of appealability.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
12 (14) days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
15 shall be served and filed within seven (7) days after service of the objections. The parties are
16 advised that failure to file objections within the specified time may waive the right to appeal the
17 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: May 10, 2016

19 /s/ Gregory G. Hollows

20 UNITED STATES MAGISTRATE JUDGE

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