UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

10 ALFREDO GOMEZ,

No. 2:18-cv-01738-JAM-GGH

v. UNKNOWN,

...,

Petitioner,

Respondent.

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner, filed a motion for stay and abeyance on June 15, 2018 seeking additional time to file a petition for habeas corpus on to allow him to exhaust previously unappealed claims. EC No. 1. On July 15, 2018, the magistrate judge to whom this matter was referred issued an Order, ECF No. 4, denying without prejudice petitioner's motion, pointing out that without a petition on file such a motion was ineffective to toll the statute of limitations that applies to habeas corpus matters. Petitioner was advised to file a petition and then move for stay and abeyance. The Clerk was directed to provide petitioner with this court's habeas corpus petition form and its application form with regard to acquisition of in forma pauperis status. Id. Petitioner took no action in response to that Order, and on November 5, 2018 this court issued an Order to Show Cause ("OSC") why the pending case should not be dismissed for failure to act on the earlier order. Petitioner was advised that failure to respond to the OSC within thirty (30) days would result in a recommendation that the district court dismiss the action for failure to obey a court order and failure to prosecute. That 30 day time limit has come and gone without any new

1 filing by the petitioner. 2 In light of the foregoing, IT IS HEREBY RECOMMENDED that: 3 1. This action be dismissed without prejudice to the filing of a petition for failure to 4 obey a court order and to prosecute pursuant to Federal Rule of Civil Procedure 41(b); 5 2. The Clerk of the Court should close this file; 6 3. No Certificate of Appealability should issue. 7 These findings and recommendations are submitted to the United States District Judge 8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days 9 after being served with these findings and recommendations, petitioner may file written 10 objections with the court. The document should be captioned "Objections to Magistrate Judge's 11 Findings and Recommendations." Any response to the objections shall be filed and served within 12 fourteen days after service of the objections. Petitioner is advised that failure to file objections 13 within the specified time may waive the right to appeal the District Court's order. Martinez v. 14 Ylst, 951 F.2d 1153 (9th Cir. 1991). 15 Dated: December 12, 2018 /s/ Gregory G. Hollows 16 UNITED STATES MAGISTRATE JUDGE 17 18 19 20 21 22 23 24 25 26 27

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