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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENIO PENA,

No. C 12-00023 SBA (PR)

Petitioner,

ORDER OF DISMISSAL

v.

R. GROUNDS, Warden, et al.,

Respondents.

This action was opened in error when the Court received a habeas petition form from Petitioner that was intended to be filed in a previously-filed action -- Case No. C 11-6692 SBA (PR). In Case No. C 11-6692 SBA (PR), Petitioner originally filed that action in the United States District Court for the Eastern District of California. On December 16, 2011, he began his action by submitting a copy of his state habeas corpus petition, which he had filed in the California Supreme Court. In an Order dated December 19, 2011, Magistrate Judge Gary S. Austin transferred Petitioner's action from the Eastern District to this Court. Magistrate Judge Austin noted that Petitioner had not "paid the \$5.00 filing fee or submitted an application to proceed in forma pauperis for this action." (Dec. 19, 2011 Order by Magistrate Judge Austin at 1.) On December 29, 2011, the Clerk of the Court sent a notice to Petitioner informing him that his action had been transferred to this District and assigned Case No. C 11-6692 SBA (PR).

On January 4, 2012, Petitioner completed and filed a habeas petition form along with other documents; however, he did not indicate that they were to be filed in Case No. C 11-6692 SBA (PR). Therefore, as mentioned above, a new action was opened. Also on January 4, 2012, the Clerk sent a notice to Petitioner directing him to either pay the filing fee or file a completed prisoner's in

1 forma pauperis application. The Clerk sent Petitioner a blank in forma pauperis application and told
2 him that he must pay the fee or return the completed application within thirty days or his action
3 would be dismissed. To date, Petitioner has not responded to the Clerk's January 4, 2012 notice.

4 Petitioner currently has two separate habeas actions pending, although he meant to file only
5 one action. Accordingly, the Clerk is directed to remove Petitioner's habeas petition form from this
6 action along with all other documents filed by Petitioner. The Clerk is then directed to file them in
7 his previously-filed action, Case No. C 11-6692 SBA (PR). The Clerk is further directed to mark his
8 petition and all other documents as filed on the dates they were received by the Court. The Court
9 will review his petition and any other pending motions in a separate written Order in Case No. C 11-
10 6692 SBA (PR).

11 The present action is DISMISSED because it was opened in error. No filing fee is due. The
12 Clerk shall close the file.

13 IT IS SO ORDERED.

14 DATED: 1/19/12


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 EUGENIO PENA,

5 Plaintiff,

6 v.

7 BOARD OF PRISONS et al,

8 Defendant.

Case Number: CV12-00023 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on January 23, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Eugenio Pena H-77082
16 Salinas Valley State Prison
17 P.O. Box 689
18 Soledad, CA 93960-0689

19 Dated: January 23, 2012

20 Richard W. Wiekling, Clerk
21 By: LISA R CLARK, Deputy Clerk