

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-8022-ODW (SH)	Date	May 21, 2012
Title	<u>Lionil Fernandez v. Terri Gonzalez, Warden</u>		

Present: The Honorable	Stephen J. Hillman		
	Sandra Butler		
	Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
	N/A		N/A
<b>Proceedings:</b>	(IN CHAMBERS)		

As stated in the Court’s April 24, 2012 Minute Order, Claim Four of the First Amended Petition was withdrawn, based on petitioner’s election to withdraw that claim in his Notice of Withdrawal (filed on April 18, 2012).

In the Court’s April 24, 2012 Minute Order, following the Court’s denial of petitioner’s request for a “stay and abeyance” procedure (Option 3 of the Court’s March 30, 2012 Minute Order), the Court stated that it was unclear whether as a backup option to Option 3 petitioner in his Notice of Election (filed on April 18, 2012) had selected Option 2 of the Court’s March 30, 2012 Minute Order (namely, that since petitioner wished to proceed with the third and fifth claims alleged in the First Amended Petition, he was filing a notice of voluntary dismissal without prejudice of the First Amended Petition in order to return to state court to exhaust his state remedies with respect to those unexhausted claims).<sup>1</sup> The Court ordered petitioner to file a Notice of Clarification by May 7, 2012 indicating whether he had, in fact, selected (as a backup option to Option 3) Option 2 of the Court’s March 30, 2012 Minute Order; and stated that petitioner’s failure to submit a timely Notice of Clarification would result in the Court assuming petitioner had selected (as a backup option to Option 3) Option 2 of the Court’s March 30, 2012

<sup>1</sup> In the section of the March 30, 2012 Minute Order concerning Option 2, the Court cautioned petitioner that: (1) a new federal habeas petition filed in this Court will be subject to the one-year statute of limitations and to any applicable procedural bars; and (2) the one-year statute of limitations is not tolled during the time that petitioner’s Petition, his First Amended Petition, or any other federal habeas petition has been pending in this Court.

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Minute Order.

As of today's date, petitioner has not filed a Notice of Clarification. Therefore, the Court assumes that in his Notice of Election petitioner selected (as a backup option to Option 3) Option 2 of the Court's March 30, 2012 Minute Order.

Accordingly, the Clerk is directed to enter petitioner's voluntary dismissal of the Petition, pursuant to Fed. R. Civ. P. 41(a)(2).

cc: **Counsel of Record\***  
**\*the term "counsel" as used herein also includes any pro se party.**  
**See Local Rule 2.9.3.**

Initials of Preparer \_\_\_\_\_ : \_\_\_\_\_  
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