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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RONALD FUCCI,

1:10-cv-00315-AWI-SMS (HC)

Petitioner,

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DISREGARDING
PETITIONER’S REQUEST TO FILE
SURREPLY, GRANTING REQUEST TO
WITHDRAW UNEXHAUSTED CLAIMS,
AND DIRECTING RESPONDENT TO FILE
ANSWER TO MERITS OF EXHAUSTED
CLAIMS WITHIN FORTY-FIVE DAYS FROM
THE DATE OF SERVICE

v.

KEN CLARK,

Respondent.

/ [Doc. 14]

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

On July 1, 2010, the Magistrate Judge issued [Findings and Recommendation](#) that recommended Respondent’s Motion to Dismiss be DENIED in part and GRANTED in part. This Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order. Over thirty (30) days have passed and no party has filed objections.

On July 7, 2010, Petitioner filed a motion to file a [surreply](#) to Respondent’s reply. Neither this Court’s order to respond or the Federal Rules of Civil Procedure allow for the filing of a surreply, and Petitioner’s surreply shall be disregarded. On July 19, 2010, Petitioner filed a motion to [withdraw](#) the unexhausted claims.

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1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted
2 a *de novo* review of the case. Having carefully reviewed the entire file, the Court finds that the
3 Findings and Recommendation is supported by the record and proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Petitioner's motion to file a surreply is DISREGARDED;
- 6 2. The Findings and Recommendation issued July 1, 2010, is ADOPTED IN FULL;
- 7 3. The Motion to Dismiss is DENIED in part and GRANTED in part;
- 8 4. Petitioner's motion to withdraw the unexhausted claims is GRANTED, and the
9 unexhausted claims are DISMISSED from the action;
- 10 5. Within forty-five days from the date of service of this order, Respondent is
11 directed to file an answer to the exhausted claims; and
- 12 6. The matter is referred back to the Magistrate Judge for further proceedings.

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14 IT IS SO ORDERED.

15 Dated: August 24, 2010

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18 CHIEF UNITED STATES DISTRICT JUDGE
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