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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSE SANCHEZ,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

) 1:10-cv-00808-MJS HC
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ORDER GRANTING PETITIONER'S MOTION TO VOLUNTARILY DISMISS PETITION

[Doc. 6]

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

On August 23, 2010, the Magistrate Judge issued an order to show cause why the petition should not be dismissed for Petitioner's failure to exhaust state remedies. The order was served on Petitioner and contained notice that a response was to be filed within thirty (30) days of the date of service of the order.

On September 7, 2010, Petitioner filed a response to the order to show cause. (Resp., ECF No. 6.) Petitioner notes in his response that he wishes to withdraw his Petition as he mistakenly filed it with the wrong court. (Id.)

The federal courts have a duty to construe pro se pleadings liberally. Hamilton v. United

1 States, 67 F.3d 761, 764 (9th Cir.1995) (citing Hughes v. Rowe, 449 U.S. 5, 9 (1980)
2 (quotation omitted)). Consistent with such duty, the Court will construe Petitioner's September
3 7, 2010 response as a motion pursuant to Federal Rule of Civil Procedure 41(a)(1) to
4 voluntarily dismiss the action without prejudice. (See Rule 12, Rules Governing Section 2254
5 Cases, "The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with
6 any statutory provisions or these rules, may be applied to a proceeding under these rules.")

7 Accordingly, good cause having been presented to the Court, IT IS HEREBY
8 ORDERED that the petition is DISMISSED without prejudice. The Clerk of Court is DIRECTED
9 to enter judgment and close the case.

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11 IT IS SO ORDERED.

12 Dated: September 10, 2010

1s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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