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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JOHN RAY DYNES,)	1:10-cv-01041-JLT HC
)	
Petitioner,)	
)	FINDINGS AND RECOMMENDATIONS TO
v.)	GRANT PETITIONER’S MOTION TO
)	VOLUNTARILY DISMISS PETITION
)	(Doc. 9)
FRESNO COUNTY MUNICIPAL)	
COURT DEPARTMENT 31,)	ORDER REQUIRING OBJECTIONS TO BE
)	FILED WITHIN TWENTY DAYS
Respondent.)	
_____)	ORDER DIRECTING CLERK OF COURT TO
)	ASSIGN CASE TO DISTRICT JUDGE

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

The instant federal petition for writ of habeas corpus was filed in this Court on June 10, 2010. (Doc. 1). On August 25, 2010, the Court issued an Order to Show Cause why the petition should not be dismissed as containing unexhausted claims. (Doc. 8). The Order to Show Cause gave Petitioner thirty days in which to respond. (Id.). On September 1, 2010, Petitioner filed the instant motion to voluntarily dismiss the petition. (Doc. 9).

Subject to other provisions of law, a petitioner may voluntarily dismiss an action without leave of court before service by the adverse party of an answer or motion for summary judgment.

1 Fed. R. Civ. P. 41(a). Otherwise, an action shall not be dismissed except upon order of the Court
2 and upon such terms and conditions as the court deems proper. Id. Here, no answer has been
3 served or filed. Here, although Petitioner offers no reasons for his motion, leave of Court is not
4 required. Accordingly, the Court recommends that Petitioner’s motion be granted and that the
5 petition be dismissed.

6 **ORDER**

7 Accordingly, IT IS ORDERED as follows:

- 8 1. The Court DIRECTS the Clerk of the Court to assign the case to a United States
9 District Judge.

10 **RECOMMENDATIONS**

11 Accordingly, the Court HEREBY RECOMMENDS that Petitioner’s motion to
12 voluntarily dismiss the petition (Doc. 9), be GRANTED.

13 This Findings and Recommendation is submitted to the United States District Court
14 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
15 of the Local Rules of Practice for the United States District Court, Eastern District of California.

16 Within twenty (20) days after being served with a copy, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the objections
19 shall be served and filed within ten (10) court days (plus three days if served by mail) after
20 service of the objections. The Court will then review the Magistrate Judge’s ruling pursuant to
21 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the
22 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
23 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 Dated: September 3, 2010

27 /s/ Jennifer L. Thurston
28 UNITED STATES MAGISTRATE JUDGE