

## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES FAGONE, 1:10-cv-02045-LJO-SMS (HC)

Petitioner, ORDER DIRECTING CLERK OF THE COURT  
v. TO CLOSE THIS CASE PURSUANT TO  
PLAINTIFF'S NOTICE OF VOLUNTARY  
DISMISSAL

LELAND McEWAN, (Docs. 9, 11)

Respondent.

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Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is represented by Charles Carbone, Esq.

On December 28, 2010, Petitioner James Fagone filed a notice of voluntary dismissal. On January 28, 2011, Mr. Carbone also filed a notice of voluntary dismissal. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), an action may be dismissed without a court order if

- (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared.

Respondent has not yet filed an answer to the petition, and Petitioner has the absolute right to dismiss his claims, without prejudice. Duke Energy Trading and Marketing, L.L.C. v. Davis, 267 F.3d 1042, 1049 (9th Cir. 2001). The filing of the notice itself has the effect of closing the action, and the Court no longer has jurisdiction over the claims. Id.

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Accordingly, the Clerk of the Court is HEREBY DIRECTED to close this file pursuant to Petitioner's notice of voluntary dismissal filed on December 28, 2010.

IT IS SO ORDERED.

Dated: February 4, 2011

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**/s/ Lawrence J. O'Neill**  
UNITED STATES DISTRICT JUDGE