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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

TORRANCE KENDRICKS,)	Case No.: 1:14-cv-01374-JLT
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS TO
)	GRANT PETITIONER'S MOTION TO DISMISS
v.)	PETITION FOR WRIT OF HABEAS CORPUS
)	(Doc. 11)
PEOPLE OF THE STATE OF CALIFORNIA,)	
)	ORDER REQUIRING OBJECTIONS TO BE
Respondent.)	FILED WITHIN TWENTY-ONE DAYS
)	
)	ORDER DIRECTING CLERK OF COURT TO
)	ASSIGN DISTRICT JUDGE TO CASE

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

PROCEDURAL HISTORY

The instant petition was filed on August 27, 2014. (Doc. 1). On February 13, 2015, Petitioner filed the instant motion to dismiss the petition, indicating that he had filed a similar petition in this Court in case no. 1:14-cv-01496-GSA and had dismissed that petition due to its lack of exhaustion. (Doc. 11, p. 2). The Court dismissed that petition on November 18, 2014. Petitioner had believed that this petition would also be dismissed for the same reason. (Id.).

DISCUSSION

Subject to other provisions of law, a petitioner may voluntarily dismiss an action without leave

1 of court before service by the adverse party of an answer or motion for summary judgment. Fed. R.
2 Civ. P. 41(a). Otherwise, an action shall not be dismissed except upon order of the Court and upon
3 such terms and conditions as the court deems proper. Id. Here, no answer has been served or filed.
4 Accordingly, Petitioner is entitled to dismiss the petition without leave of Court. Id. Moreover, the
5 Court notes that the instant petition appears to be the result of a miscommunication between Petitioner
6 and the Court in which the Clerk of the Court filed two petitions that were intended to be a single
7 petition, thus generating confusion over the dismissal of one petition and the non-dismissal of the
8 instant petition.

9 **ORDER**

10 For the foregoing reasons, the Court HEREBY DIRECTS the Clerk of the Court to assign a
11 United States District Judge to this case.

12 **RECOMMENDATION**

13 Accordingly, the Court RECOMMENDS that Petitioner’s Motion to Dismiss (Doc. 11), be
14 GRANTED;

15 This Findings and Recommendations is submitted to the United States District Judge assigned
16 to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of
17 Practice for the United States District Court, Eastern District of California. **Within 21 days** after being
18 served with a copy, any party may file written objections with the Court and serve a copy on all parties.
19 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
20 Recommendations.” Replies to the objections shall be served and filed **within 10 days** after service of
21 the objections. The parties are advised that failure to file objections within the specified time may
22 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23
24 IT IS SO ORDERED.

25 Dated: April 17, 2015

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