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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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11 GARY DALE BARGER,

12 Petitioner,

13 v.
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15 DIRECTOR OF OPERATIONS OF THE
16 CDCR,

17 Respondent.

Case No. 1:14-cv-01693-BAM-HC

ORDER GRANTING PETITIONER'S MOTION
FOR VOLUNTARY DISMISSAL OF THE
PETITION FOR WRIT OF HABEAS CORPUS
(DOC. 25)

ORDER DISMISSING THE PETITION
WITHOUT PREJUDICE (DOC. 1),
DISMISSING PENDING MOTIONS AS MOOT
(DOCS. 20-24), AND DIRECTING THE
CLERK TO CLOSE THE ACTION

18 Petitioner is a state prisoner or detainee confined at the
19 California Health Care Facility who is serving an eight-year
20 sentence imposed in the Kern County Superior Court for assault.
21 (Pet., doc. 1 at 1.) Petitioner is proceeding pro se and in forma
22 pauperis with a petition for writ of habeas corpus pursuant to 28
23 U.S.C. 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has
24 consented to the jurisdiction of the United States Magistrate Judge
25 to conduct all further proceedings in the case, including the entry
26 of final judgment, by manifesting Petitioner's consent in a writing
27 signed by Petitioner and filed by Petitioner on December 1, 2014
28 (doc. 17). Pending before the Court is the Petitioner's request for

1 voluntary dismissal of the petition, which was filed on December 18,
2 2014.

3 I. Voluntary Dismissal of the Petition

4 The named respondent has not appeared in the action. Between
5 December 5, 2014, and December 15, 2014, Petitioner filed numerous
6 motions regarding injunctive relief. Petitioner then filed the
7 instant motion for voluntary dismissal of the petition on December
8 18, 2014.

9 Subject to other provisions of law, a petitioner may
10 voluntarily dismiss an action without leave of court before service
11 by the adverse party of an answer or motion for summary judgment.
12 Fed. R. Civ. P. 41(a). Otherwise, an action shall not be dismissed
13 except upon order of the court and upon such terms and conditions as
14 the court deems proper. Id.

15 Here, no answer or motion to dismiss has been served or filed.
16 Thus, Petitioner is entitled to dismissal.

17 II. Disposition

18 Accordingly, it is ORDERED that:

- 19 1) Petitioner's motion for voluntary dismissal is GRANTED; and
20 2) Petitioner's pending motions are DISMISSED as moot; and
21 3) The petition for writ of habeas corpus is DISMISSED without
22 prejudice; and
23 4) The Clerk is DIRECTED to close this action because this
24 order terminates the proceeding in its entirety.

25 IT IS SO ORDERED.

26 Dated: February 3, 2015

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE