

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

## MICHAEL LYNN WATERS,

Petitioner,

V.

PEOPLE OF THE STATE OF  
CALIFORNIA,

## Respondent.

Case No. 1:15-cv-00330-AWI-SAB-HC

FINDINGS AND RECOMMENDATION  
RECOMMENDING GRANTING  
PETITIONER'S MOTION TO  
VOLUNTARILY DISMISS PETITION AND  
DENYING AS MOOT PETITIONER'S  
MOTION TO AMEND PETITION

Petitioner is a state prisoner proceeding pro se with a petition for writ of mandamus.

19 On March 3, 2015, Petitioner filed the instant petition. Petitioner has not responded to the  
20 Court's first or second orders for consent or request for reassignment to a District Court Judge.  
21 A District Court Judge has been assigned to the case. (ECF No. 7).

22 On March 18, 2015, Petitioner filed a document which the Court construes as a motion to  
23 amend the petition. (ECF No. 4). On April 22, 2015, Petitioner filed a motion to voluntarily  
24 dismiss the petition. (ECF No. 6). Petitioner stated that “the state Supreme Court (has)  
25 answered and petition filed into the 9<sup>th</sup> Circuit. This case should be closed now.” (ECF No. 6).

26 Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, “the [petitioner]  
27 may dismiss an action without a court order by filing: a notice of dismissal before the opposing  
28 party serves either an answer or a motion for summary judgment . . . .”

1 In this case, Respondent has not yet filed an answer or other responsive pleading.  
2 Therefore, under Rule 41(a)(1), the petition must be dismissed without prejudice. As the Court  
3 recommends that the petition be dismissed, Petitioner's motion to amend should be denied as  
4 moot.

## RECOMMENDATION

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Petitioner's motion to voluntarily dismiss the instant petition be GRANTED;
2. The petition for writ of mandamus be DISMISSED WITHOUT PREJUDICE;
3. Petitioner's motion to amend the petition be DENIED as MOOT; and
4. The Clerk of the Court be DIRECTED to close the case.

12        This Findings and Recommendation is submitted to the assigned United States District  
13 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
14 Rules of Practice for the United States District Court, Eastern District of California. Within  
15 fourteen (14) days after service of the Findings and Recommendation, Petitioner may file written  
16 objections with the court and serve a copy on all parties. Such a document should be captioned  
17 “Objections to Magistrate Judge’s Findings and Recommendation.” The District Judge will then  
18 review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Petitioner is advised  
19 that failure to file objections within the specified time may waive the right to appeal the District  
20 Court’s order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
21 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: June 18, 2015

George A. Baze  
UNITED STATES MAGISTRATE JUDGE