

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUIS VIDALES,

Petitioner,

v.

JERRY BROWN,

Respondent.

Case No. 1:15-cv-01342-LJO-SAB-HC

ORDER VACATING SEPTEMBER 8, 2015
FINDINGS AND RECOMMENDATION
AND DIRECTING CLERK OF COURT TO
CLOSE THE ACTION

Petitioner is a civil detainee proceeding pro se with a petition for writ of habeas corpus challenging civil-commitment proceedings under the Sexually Violent Predator Act (“SVPA”) which are ongoing in Merced County Superior Court. (ECF No. 1). On July 30, 2015, Petitioner filed the instant petition in the Northern District of California. (ECF No. 1). The matter was then transferred to this district. (ECF No. 10). On September 8, 2015, the Court issued a findings and recommendation that recommended that the petition be dismissed without prejudice because of abstention and exhaustion. (ECF No. 14). The Court also directed the Clerk of Court to assign a District Judge to this matter. (ECF No. 14). On September 24, 2015, Petitioner filed a notice of voluntary dismissal to withdraw the complaint and have the matter dismissed without prejudice. (ECF No. 16).

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, “. . . the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the

1 opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of
2 dismissal signed by all parties who have appeared.” Voluntary dismissal under this rule requires
3 no action on the part of the court and divests the court of jurisdiction upon the filing of the notice
4 of voluntary dismissal. See United States v. Real Property Located at 475 Martin Lane, Beverly
5 Hills, CA, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of voluntary dismissals
6 pursuant to Federal Rule of Civil Procedure 41(a)(1) (A)).

7 In this case, Respondent has not yet filed an answer or other responsive pleading. The
8 September 8, 2015 findings and recommendation is still pending before the assigned District
9 Judge. Petitioner’s notice of voluntary dismissal was effective upon filing and without a court
10 order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). As Petitioner voluntarily
11 dismissed his case, the undersigned vacates the September 8, 2015 finding and recommendation
12 currently pending before the assigned District Judge. For the sake of clarity, in light of
13 Petitioner’s notice of voluntary dismissal, the undersigned directs the Clerk of Court to close the
14 case.

15 Accordingly, IT IS HEREBY ORDERED that the September 8, 2015 findings and
16 recommendation are vacated and the Clerk of the Court is directed to close the action.

17 IT IS SO ORDERED.

18 Dated: September 29, 2015

19 
20 _____
21 UNITED STATES MAGISTRATE JUDGE