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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONE JUSTIN COWAN,
Petitioner,
v.
J. SOTO,
Respondent.

No. 1:16-cv-00083-DAD-JLT

ORDER DISMISSING ACTION, CLOSING
CASE, AND DENYING PENDING
MOTIONS AS MOOT

(Doc. Nos. 11, 13, 14)

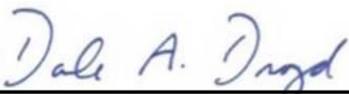
Petitioner Tyrone Justin Cowan is a state prisoner proceeding *in propria persona* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 20, 2016, the magistrate judge assigned to the case issued findings and recommendations recommending that respondent’s motion to dismiss the pending petition be granted on the grounds that petitioner had failed to exhaust any of his claims by first presenting them for review by the state high court. (Doc. No. 11.) These findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one days from the date of service of that order. While no party has yet filed objections to the findings and recommendation, on June 22, 2016, petitioner filed a request to voluntarily dismiss the petition without prejudice, presumably pursuant to Rule 41 of the Federal Rules of Civil Procedure, so that he may exhaust his claims. (Doc. No. 17.)

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1 A plaintiff may voluntarily dismiss a suit without a court order by filing a notice of
2 dismissal before the opposing party serves either an answer or a motion for summary judgment.
3 Fed. R. Civ. P. 41(a)(1)(A); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).¹
4 Here, petitioner does not require a court order to dismiss this petition, as respondent has neither
5 served an answer or a motion for summary judgment on petitioner. Therefore, the request for
6 voluntary dismissal will be deemed a notice of dismissal filed in accordance with Rule
7 41(a)(1)(A) of the Federal Rules of Civil Procedure, and the matter is dismissed without
8 prejudice. All pending motions (Doc. Nos. 11, 13, 14) are denied as having been rendered moot
9 by petitioner's voluntary dismissal of his petition, and the Clerk of Court is directed to close the
10 case.

11 IT IS SO ORDERED.

12 Dated: September 14, 2016

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15 UNITED STATES DISTRICT JUDGE
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27 ¹ Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, the "Federal Rules of Civil
28 Procedure, to the extent that they are not inconsistent with these rules, may be applied, when
appropriate, to petitions filed under these rules."