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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FERNANDO SINGLETON MILLSAP,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Case No. 1:17-cv-00793-DAD-EPG-HC

ORDER GRANTING RESPONDENT'S
REQUEST TO WITHDRAW MOTION TO
DISMISS

ORDER SETTING BRIEFING SCHEDULE
(ECF Nos. 18, 22)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 15, 2017, Respondent moved to dismiss the petition. (ECF No. 18). On September 1, 2017, Respondent filed the instant request to withdraw the motion to dismiss in light of the Ninth Circuit's recent decision in Clayton v. Biter, 868 F.3d 840 (9th Cir. 2017). (ECF No. 22).

Accordingly, the Court HEREBY ORDERS:

1. Respondent's request to withdraw the motion to dismiss (ECF No. 22) is GRANTED;
2. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL FILE an ANSWER addressing the merits of the Petition. See Rule 4, Rules Governing Section 2254 Cases; Cluchette v. Rushen, 770 F.2d 1469, 1473-74 (9th Cir. 1985) (court has discretion to fix time for filing a response). Any argument

1 by Respondent that Petitioner has procedurally defaulted a claim SHALL BE
2 MADE in the ANSWER, but must also address the merits of the claim asserted.

3 3. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL
4 FILE any and all transcripts or other documents necessary for the resolution of the
5 issues presented in the Petition. See Rule 5(c), Rules Governing Section 2254
6 Cases.

7 4. Petitioner MAY FILE a Traverse within **THIRTY (30) days** of the date
8 Respondent's Answer is filed with the Court. If no Traverse is filed, the Petition
9 and Answer are deemed submitted at the expiration of the thirty days.

10 All motions shall be submitted on the record and briefs filed without oral argument unless
11 otherwise ordered by the Court. Local Rule 230(l). These dates should be considered as firm by
12 all parties. If any party requires additional time, it should file a motion for amendment of the
13 schedule before a deadline has passed and explain in detail why the party cannot comply with
14 this schedule. Extensions of time will only be granted upon a showing of good cause. All
15 provisions of Local Rule 110 are applicable to this order.

16 IT IS SO ORDERED.
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18 Dated: October 2, 2017

19 /s/ Eric P. Gray
20 UNITED STATES MAGISTRATE JUDGE
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