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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUKE A. SCARMAZZO,
Petitioner,
v.
PLUMLEY,
Respondent.

Case No. 1:17-cv-00939- EPG-HC
ORDER TERMINATING AS MOOT
MOTION TO WITHDRAW PETITION AND
DIRECTING CLERK OF COURT TO
CLOSE CASE
(ECF No. 10)

Petitioner is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On July 27, 2017, Petitioner filed the instant motion to withdraw the petition. (ECF No. 10). Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal under this rule requires no action on the part of the court and divests the court of jurisdiction upon the filing of the notice of voluntary dismissal. See United States v. 475 Martin Lane, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of voluntary dismissals pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)).

In this case, Respondent has not served either an answer or a motion for summary judgment. Thus, Petitioner’s notice of dismissal was effective upon filing and without a court

1 order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). For the sake of clarity, in light
2 of the notice of dismissal, IT IS HEREBY ORDERED that the motion to withdraw the petition is
3 TERMINATED as moot and the Clerk of the Court is DIRECTED to CLOSE the case.

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5 IT IS SO ORDERED.

6 Dated: July 28, 2017

7 /s/ Eric P. Gray
8 UNITED STATES MAGISTRATE JUDGE
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