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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,
Petitioner,
v.
KERN COUNTY SUPERIOR COURT,
Respondent.

Case No. 1:17-cv-01000- SAB-HC
ORDER TERMINATING PETITIONER’S
MOTION TO CLOSE CASE
ORDER DIRECTING CLERK OF COURT
TO CLOSE CASE
(ECF No. 9)

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 11, 2017, Petitioner filed the instant motion to close case. (ECF No. 9). The Court construes the motion as a notice of dismissal. See Castro v. United States, 540 U.S. 375, 381–82 (2003) (courts may recharacterize a pro se motion to “create a better correspondence between the substance of a pro se motion’s claim and its underlying legal basis”); Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9th Cir. 2003) (courts have a duty to construe pro se pleadings and motions liberally).

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

1 divests the court of jurisdiction upon the filing of the notice of voluntary dismissal. See United
2 States v. 475 Martin Lane, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of
3 voluntary dismissals pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)). In this case,
4 Respondent has not served either an answer or a motion for summary judgment. Thus,
5 Petitioner's notice of dismissal was effective upon filing and without a court order pursuant to
6 Federal Rule of Civil Procedure 41(a)(1)(A)(i).

7 For the sake of clarity, in light of the notice of dismissal, IT IS HEREBY ORDERED that
8 the motion to close case is TERMINATED and the Clerk of the Court is DIRECTED to CLOSE
9 the case.

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11 IT IS SO ORDERED.

12 Dated: August 15, 2017


UNITED STATES MAGISTRATE JUDGE

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