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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ZAIN BHAMANI,
Petitioner,
v.
CRAIG APKER,
Respondent.

No. 1:17-cv-01572-DAD-JLT (HC)

ORDER GRANTING PETITIONER’S
MOTION TO DISMISS ACTION AND
DIRECTING CLERK OF COURT TO CLOSE
CASE

(Doc. No. 5)

Petitioner is a federal prisoner proceeding *in propria persona* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On November 30, 2017, the magistrate judge assigned to this federal habeas action issued findings and recommendations recommending that the pending petition be dismissed for lack of jurisdiction. (Doc. No. 4.) The 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 the findings and recommendations. (*Id.*) To date, no party has filed objections. However, on December 18, 2017, petitioner filed a motion to withdraw his petition. (Doc. No. 5.)

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

1 court of jurisdiction upon the filing of the notice of voluntary dismissal. *See United States v. 475*
2 *Martin Lane*, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of voluntary
3 dismissals pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)). Rule 41(a)(1) has been
4 found to apply in the habeas context where the respondent had not yet filed an answer to the
5 petition. *See Clark v. Tansy*, 13 F.3d 1407, 1411 (10th Cir. 1993); *Williams v. Clarke*, 82 F.3d
6 270, 273 (8th Cir. 1996); *Dean v. Johnson*, Case No. CV 15-02971 BRO (RAO), 2016 WL
7 1170877, at *1 (C.D. Cal. Mar. 23, 2016).

8 In this case, respondent has not served either an answer or a motion for summary
9 judgment. Thus, petitioner's notice of dismissal was effective upon its filing and without a court
10 order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

11 Accordingly:

- 12 1. Petitioner's voluntary dismissal of the petition (Doc. No. 5) is granted;
- 13 2. The petition for writ of habeas corpus is dismissed;
- 14 3. All other pending motions and matters are rendered moot by this order; and
- 15 4. The Clerk of the Court is directed to close this case.

16 IT IS SO ORDERED.

17 Dated: January 31, 2018

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20 UNITED STATES DISTRICT JUDGE