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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VESTER L. PATTERSON,  
Petitioner,  
v.  
WILLIAM JOE SULLIVAN,  
Respondent.

Case No. 1:18-cv-00705-LJO-JDP  
ORDER DENYING PETITIONER’S  
VOLUNTARY MOTION TO DISMISS  
WITHOUT PREJUDICE, DISMISSING  
CASE WITHOUT PREJUDICE, AND  
DIRECTING CLERK OF COURT TO  
CLOSE CASE  
(Doc. No. 10)

Petitioner Vester L. Patterson is a state prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner moves to dismiss his petition without prejudice.

Federal Rule of Civil Procedure 41(a)(1)(A)(i) governs notices of voluntary dismissal of Section 2254 petitions before screening. *See* Rules Governing Section 2254 Cases, Rule 12; *Luna v. Kernan*, 784 F.3d 640, 643 (9th Cir. 2015); *Bhamani v. Apker*, No. 1:17-cv-1572, 2018 WL 684896, at \*1 (E.D. Cal. Feb. 1, 2018) (collecting cases). Under Rule 41(a)(1)(A)(i), “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer . . . .” Voluntary dismissal under Rule 41(a)(1)(A)(i) is automatic and requires no court order. *See* Fed. R. Civ. P. 41(a)(1)(A)(i); *Luna*, 784 F.3d at 643.

Here, petitioner has filed a motion to dismiss this case without prejudice before the court has screened the petition. (Doc. No. 10.) Rule 41 is self-executing, so a motion to dismiss is

1 unnecessary. Accordingly, the court will deny the motion to dismiss but direct the clerk of the  
2 court to close the case.

3 For these reasons,

- 4 1. Petitioner Vester L. Patterson's voluntary motion to dismiss the case without  
5 prejudice (Doc. No. 10) is denied.
- 6 2. Plaintiff has dismissed the case without prejudice.
- 7 3. The clerk of the court is directed to close the case.

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9 IT IS SO ORDERED.

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Dated: June 19, 2018

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/s/ *Jeremy D. Peterson*  
UNITED STATES MAGISTRATE JUDGE

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