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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 DU LE,

7 Petitioner,

8 vs.

9 V.M. ALMAGER,

10 Respondent.
11

Case No: C 08-03293 SBA

**ORDER GRANTING
PETITIONER'S COUNSEL'S
MOTION TO STRIKE PRO SE
SUBMISSIONS**

Dkt. 39

12 On July 9, 2008, Petitioner Du Le filed a pro se petition for writ of habeas corpus.
13 On November 8, 2008, the Court granted Petitioner's request to hold the action in abeyance
14 while he exhausted his unexhausted claims in state court. Dkt. 10.

15 On June 4, 2009, attorney Michael Bigelow substituted in as counsel for record for
16 Petitioner. Dkt. 19. On January 22, 2010, Petitioner, through counsel, filed a first amended
17 petition containing his newly exhausted claims. Dkt. 21. The Court subsequently lifted the
18 stay and issued an order directing the Respondent to show cause why the writ should not
19 issue, and matter has now been fully briefed. Dkt. 25.

20 August 27, 2012, Petitioner, while still represented by counsel, filed a pro se motion
21 to stay the action so that he could return to state court and exhaust an additional claim. Dkt.
22 33. On December 6, 2012, Petitioner filed a pro se second amended petition. Dkt. 35.
23 However, on December 10, 2012, Petitioner filed a pro se motion to withdraw his second
24 amended petition filed on December 6, 2012. Dkt. 36. In his motion, Petitioner indicates
25 that he had been advised by his attorney not to pursue any additional claims, and instead to
26 rely on the claim set forth in his amended petition filed by counsel on January 22, 2010.
27 Separately, Petitioner's counsel has filed a motion to strike all of Petitioner's pro se
28 submissions, including his second amended petition. Dkt. 39.

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A court need not consider pro se motions filed by a party who remains represented by counsel. E.g., United States v. El-Alamin, 574 F.3d 915, 923 (8th Cir. 2009); United States v. Hildreth, 485 F.3d 1120, 1125 (10th Cir. 2007); United States v. Vampire Nation, 451 F.3d 189, 206 n.17 (3rd Cir. 2006); Abdullah v. United States, 240 F.3d 683, 686 (8th Cir. 2001); Ennis v. LeFevre, 560 F.2d 1072 (2d Cir. 1977). In addition, it is apparent from Petitioner’s pro se motion to withdraw that he has decided to follow the advice of his counsel and to forego his efforts to have the second amended petition considered by the Court. Accordingly,

IT IS HEREBY ORDERED THAT Petitioner’s counsel’s motion to strike the pro se submissions filed by Petitioner is GRANTED. The Clerk shall strike Docket 33, 34, 35 and 36. This Order terminates Docket 40.

IT IS SO ORDERED.

Dated: January 30, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

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