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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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George Albert Brogdon, Jr.

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No. CV 11-1675-PHX-RCB (MEA)

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Plaintiff,

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ORDER

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vs.

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Phoenix Police Department, et al.,

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Defendants.

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Plaintiff, George Albert Brogdon, Jr., an inmate in the custody of the Arizona Department of Corrections, filed this civil rights action under 42 U.S.C. § 1983 against various employees of the Phoenix Police Department. (Docs. 1, 11.) Plaintiff now files a Motion to Dismiss. (Doc. 30.) Defendants filed no opposition.

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The Court will grant Plaintiff’s motion and dismiss the claims without prejudice.

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Pursuant to Federal Rule of Civil Procedure 41(a), a plaintiff may dismiss an action without 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). Otherwise, an action may be dismissed only by court order on terms that the court finds proper. Fed. R. Civ. P. 41(a)(2). Although Defendants have filed no motions for summary judgment, they filed answers on May 25 and June 5, 2012. (Docs. 25, 28.)

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“A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the district court’s sound discretion and the court’s order will not be disturbed unless the court has

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1 abused its discretion.” Stevedoring Servs. of Am. v. Armilla Int’l B.V., 889 F.2d 919, 921
2 (9th Cir. 1989). In deciding a motion to dismiss without prejudice, the district court must
3 determine whether the defendant will suffer some plain legal prejudice as a result of the
4 dismissal. Westlands Water Dist. v. United States, 100 F.3d 94, 96 (9th Cir. 1996) (citing
5 Hyde & Drath v. Baker, 24 F.3d 1162, 1169 (9th Cir. 1994); Hamilton v. Firestone Tire &
6 Rubber Co., 679 F.2d 143, 145 (9th Cir. 1982).) In Westlands, the court noted that case law
7 does not define “legal prejudice” but that the cases focus on the rights and defenses available
8 to a defendant in future litigation. 100 F.3d at 97, citing 5 James W. Moore, Moore’s Federal
9 Practice ¶ 41.05[1] nn. 51-53 and cases cited. Legal prejudice does not include uncertainty
10 because a dispute is unresolved. Westlands 100 F.3d at 97.

11 Defendants did not respond to the motion and, therefore, do not identify any legal
12 prejudice that they would experience as a result of dismissal without prejudice. The Court
13 will grant Plaintiff’s motion and dismiss his claims without prejudice.

14 **IT IS ORDERED:**

15 (1) The reference to the Magistrate Judge is withdrawn as to Plaintiff’s Motion to
16 Dismiss (Doc. 30).

17 (2) Plaintiff’s Motion to Dismiss (Doc. 30) is **granted**, and his claims are **dismissed**
18 **without prejudice**.

19 (3) The case is terminated, and the Clerk of Court must enter judgment accordingly.

20 (4) The parties will bear their own costs.

21 DATED this 1st day of August, 2012.

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25 Robert C. Broomfield
26 Senior United States District Judge
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