

1 which relief may be granted, or seeks monetary relief against a defendant who is
2 immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A.

3 On May 9, 2013, the Court issued an Order to Show Cause (“OSC”) why the
4 *in forma pauperis* application should not be denied. (ECF No. 2.) Specifically, the
5 Court found that to the extent Plaintiff was alleging constitutional claims against
6 the Federal Bureau of Prisons and FCI Terminal Island, the Complaint was subject
7 to dismissal based on sovereign immunity. The Court further found that the
8 Complaint was subject to dismissal for failure to state an Eighth Amendment claim
9 based on deliberate indifference to serious medical needs. (Id. at 4-7.) The Court
10 gave Plaintiff until June 14, 2013, to show cause why his *in forma pauperis*
11 application should not be denied. Plaintiff was instructed that if he wished to
12 pursue this action, he had until June 14, 2013, to file an amended Complaint,
13 attempting to cure the defects in the Complaint. Finally, the Court admonished
14 Plaintiff that the “[f]ailure to comply with these requirements may result in a
15 recommendation that the *in forma pauperis* application be denied for failure to
16 state a claim on which relief may be granted. The failure to properly respond to
17 this OSC will result in a recommendation that the *in forma pauperis* application be
18 denied for failure to prosecute and/or failure to comply with a court order.” (Id. at
19 7, 8.)

20 On July 2, 2013, Plaintiff filed a letter with the Court in which he requested
21 appointment of counsel. If his request for appointment of counsel was to be
22 denied, Plaintiff requested in the alternative a dismissal of the current action
23 without prejudice. (ECF No. 3.) The Court denied Plaintiff’s request for
24 appointment of counsel. (ECF No. 4.) The Court construes Plaintiff’s alternative
25 request in his letter as a notice of voluntary dismissal pursuant to Rule 41 of the
26 Federal Rules of Civil Procedure.

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1 **II.**

2 **DISCUSSION**

3 Rule 41 of the Federal Rules of Civil Procedure provides that a plaintiff may
4 dismiss an action without a court order by filing a notice of dismissal before the
5 opposing party serves either an answer or a motion for summary judgment. Fed.
6 R. Civ. P. 41(a)(1). Unless otherwise stated in the notice, the dismissal is without
7 prejudice. Id. However, if the plaintiff previously dismissed any federal-or
8 state-court action based on or including the same claim, a notice of dismissal
9 operates as an adjudication on the merits. Id.

10 In his letter, Plaintiff stated that if his request for appointment of counsel
11 was denied, he requested a dismissal of the current action without prejudice. (ECF
12 No. 3.) The Court denied Plaintiff's request for appointment of counsel. (ECF No.
13 4.) Given that Plaintiff's *in forma pauperis* application was never granted and that
14 the Complaint was never formally filed, neither an answer nor a motion for
15 summary judgment have been filed by any Defendant. As a result, the Court finds
16 that the dismissal of this action without prejudice and the administrative closure of
17 this matter are warranted. Fed. R. Civ. P. 41(a)(1).

18 **III.**

19 **ORDER**

20 IT IS THEREFORE ORDERED that this action is dismissed without
21 prejudice and this matter shall be administratively closed.

22
23 DATED: 8/5, 2013


24 HONORABLE GEORGE H. KING
Chief United States District Judge

25 Presented by:


26
27 HONORABLE OSWALD PARADA
28 United States Magistrate Judge

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