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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ERIC MARTIN,

Plaintiff,

v.

Y. HARRIS, et al.,

Defendants.

CASE NO. 1:04-cv-05358-LJO-SKO PC

ORDER DENYING MOTION, WITHOUT PREJUDICE

(Doc. 115)

Plaintiff Eric Martin (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 11, 2010, Plaintiff filed a motion seeking voluntary dismissal of this lawsuit. (Doc. #115.) Plaintiff’s motion “seeks dismissal without prejudice, and an order permitting refile and serving, perhaps as a stay, until later when plaintiff’s circumstances improve.” (Mot. to Dismiss or Stay Case Without Prejudice and With Leave to Refile at Late Date When Better 3, ECF No. 115.)

The Court will deny Plaintiff’s motion, without prejudice to Plaintiff’s ability to re-file a second request for dismissal. Although Federal Rule of Civil Procedure 41(a)(1)(A)(i) permits Plaintiff to dismiss his action without prejudice when Plaintiff files a request before any opposing party serves a response to Plaintiff’s complaint, nothing in the rule permits the Court to dismiss this case along with an order that explicitly permits Plaintiff to re-file in the future. If Plaintiff wishes to voluntarily dismiss this case, he may file another request to do so, but the Court will not issue an order granting Plaintiff explicit permission to re-file in the future. If Plaintiff wishes to voluntarily

1 dismiss this action, he must carefully weigh his options and be prepared to endure any adverse
2 consequences of his decision.

3 In the alternative, Plaintiff requests a stay of this action for an indeterminate amount of time
4 because of various impediments to Plaintiff's ability to litigate this action. Plaintiff alleges that his
5 typewriter broke and it is too painful to write legal documents by hand. Plaintiff further alleges that
6 he is unable to obtain sufficient time in the law library, he is suffering from immobility due to a
7 broken leg and is suffering from valley fever, and he has depleted all of his funds and can no longer
8 afford to litigate this case. Finally, Plaintiff alleges that the nature of the case has been complicated
9 since the Ninth Circuit ruled on Plaintiff's appeal.

10 The Court will not stay this action for an indeterminate amount of time. Plaintiff must
11 litigate his lawsuit in a diligent and timely manner.

12 The Court will deny Plaintiff's motion. Further, the Court notes that Plaintiff has not
13 completed and submitted the service forms as ordered by the Court's July 7, 2010 order. The Court
14 will order Plaintiff to complete and submit those forms within twenty (20) days of the date of service
15 of this order.

16 Accordingly, it is HEREBY ORDERED that:

- 17 1. Plaintiff's motion to dismiss this case is DENIED without prejudice to Plaintiff's
18 ability to request voluntary dismissal again in the future; and
- 19 2. Within **twenty (20) days** from the date of service of this order, Plaintiff shall
20 complete and submit the service forms referred to in the Court's July 7, 2010 order.

21 **The failure to comply with this order will result in a recommendation that this action**
22 **be dismissed.**

23
24 IT IS SO ORDERED.

25 **Dated: September 7, 2010**

26 **/s/ Sheila K. Oberto**
27 **UNITED STATES MAGISTRATE JUDGE**
28