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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GILBERT F. COLON,

1:07-cv-00932-AWI-GSA-PC

Plaintiff,

ORDER FOR DEFENDANTS  
SYDENSTRICKER, PETERSON,  
THOMATOS, AND WITWER TO  
RESPOND TO PLAINTIFF'S MOTION  
TO DISMISS WITHIN THIRTY DAYS

v.

DR. ST. CLAIR, et al.,

Defendants.

(Doc. 62.)

**I. BACKGROUND**

Plaintiff Gilbert F. Colon ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on June 28, 2007. (Doc. 1.) This action now proceeds on Plaintiff's Amended Complaint filed on June 5, 2008, against defendants Sydenstricker, Greenough, Peterson, Thomatos, and Witwer, for inadequate medical care in violation of the Eighth Amendment.<sup>1</sup> (Doc. 13.) On April 8, 2010, Plaintiff filed a motion to dismiss defendant Greenough from this action. (Doc. 62.)

**II. RULE 41**

Under Rule 41 of the Federal Rules of Civil Procedure, "the plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either

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<sup>1</sup>All other claims and defendants were dismissed from this action by the Court on May 27, 2009. (Doc. 16.)

1 an answer or a motion for summary judgment; or a stipulation of dismissal signed by all parties  
2 who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In this case, defendant Thomatos filed an  
3 Answer on November 18, 2009; defendants Sydenstricker and Witwer filed an Answer on June  
4 1, 2010; and defendant Peterson filed an Answer on October 25, 2010. (Docs. 25, 42, 51.) No  
5 other parties have appeared in this action. Therefore, before Plaintiff can dismiss defendant  
6 Greenough, defendants Sydenstricker, Thomatos, Witwer, and Peterson must consent in writing  
7 to the dismissal. Defendants shall be required to respond in writing to Plaintiff's motion to  
8 dismiss.

9 **III. CONCLUSION**

10 Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of service of  
11 this order, defendants Sydenstricker, Thomatos, Witwer, and Peterson shall respond in writing to  
12 Plaintiff's motion to dismiss filed December 16, 2010, indicating whether they consent to the  
13 dismissal of defendant Greenough, or whether they have any reason to oppose the dismissal.

14  
15 IT IS SO ORDERED.

16 **Dated: December 22, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE