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

MARIO B. GONZALEZ,

1:08-cv-00391-SMS-PC

Plaintiff,

ORDER GRANTING PLAINTIFF’S MOTION  
TO DISMISS ACTION  
(Doc. 9)

v.

ORDER DISMISSING ACTION IN ITS  
ENTIRETY WITHOUT PREJUDICE

DERRAL G. ADAMS, et al.,

ORDER DIRECTING CLERK TO CLOSE FILE

Defendants.

Plaintiff Mario B. Gonzalez (“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 on March 18, 2008. (Doc. 1.) On April 4, 2008, Plaintiff consented to Magistrate Judge jurisdiction, and no other party has appeared in this action. (Doc. 4.)

On August 27, 2009, Plaintiff filed a motion to dismiss his complaint. (Doc. 9.) “[U]nder Rule 41(a)(1)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been

1 brought, the defendant can't complain, and the district court lacks jurisdiction to do anything  
2 about it." Id. at 1078. No defendant has filed an answer or other responsive pleading.  
3 Therefore, Plaintiff's motion shall be granted.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion to dismiss the complaint is GRANTED;
- 6 2. This action is DISMISSED in its entirety without prejudice; and
- 7 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the  
8 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

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11 IT IS SO ORDERED.

12 **Dated:** August 31, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE