

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAULTON J. MITCHELL,

No. C 08-00577 WHA (PR)

Plaintiff,

ORDER DIRECTING DEFENDANTS TO SHOW CAUSE WHY PLAINTIFF'S REQUEST FOR VOLUNTARY DISMISSAL SHOULD NOT BE GRANTED

v.

R. VALDIVIA, J. GARCIA, R. MCCOY,
E. SALINAS, JOHN DOE,

Defendants.

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Before the court is plaintiff's "Motion to Voluntarily Dismiss" (docket no. 57). In his motion dated August 22, 2011, Plaintiff requests that the court "dismiss this civil action complaint against the defendant(s)." (Pl.'s Mot. at 1.) He claims that he is "obtaining a[n] attorney" and that he "will then refile this civil action complaint." (Id.)

A plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal "at any time before service by the adverse party of an answer or of a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice, but unless plaintiff's notice of dismissal states otherwise, it is deemed to be "without prejudice." See Fed. R. Civ. P. 41(a)(1); Humphreys v. United States, 272 F.2d 411, 412 (9th Cir. 1959).

In the present action, plaintiff's request for voluntary dismissal was filed after service by defendants of their answer and dispositive motion, therefore, the Court finds that plaintiff, at this time, does not have the absolute right to dismiss his action voluntarily. See Fed. R. Civ. P. 41(a)(1)(i). However, this does not mean that plaintiff's request for voluntary dismissal cannot be granted at this juncture. No later than thirty days from the date of this order, the court directs defendants to show cause why plaintiff's request for voluntary dismissal should not be granted.

IT IS SO ORDERED.

Dated: September 12, 2011



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE