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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Phillip Dunn

Plaintiff,

vs.

Matthew Cate, et al.,

Defendants.

No. CV-08-0873-NVW

ORDER

Before the Court is Plaintiff's second Motion to Dismiss Plaintiff's Case (Doc. 64) and Defendants' Statement of Non-Opposition (Doc. 65), which states that Defendants' do not object to voluntary dismissal with prejudice, as they have expended substantial resources in defending this case and have a pending motion for summary judgment. Plaintiff's second Motion to Dismiss Plaintiff's Case does not state whether it seeks dismissal with prejudice or without prejudice, but the Court already denied Plaintiff's first motion for voluntary dismissal, which sought dismissal without prejudice (Doc. 62, 63). Defendants are entitled to have their pending motion for summary judgment ruled upon or to have this case voluntarily dismissed with prejudice. Plaintiff's second Motion to Dismiss Plaintiff's Case will be denied, but only because it does not explicitly state that it seeks dismissal with prejudice. A further motion for voluntary dismissal with prejudice will be granted if it is filed. Moreover, Plaintiff is required to file a response by August 24, 2010, to Defendants' Motion for Summary Judgment (Doc. 59), and failure to file a


1 timely response to that motion will result in granting the Motion for Summary Judgment
2 if it is well founded.

3 IT IS THEREFORE ORDERED that Plaintiff's second Motion to Dismiss
4 Plaintiff's Case (Doc. 64) is denied, but only because it does not state whether it seeks
5 dismissal with prejudice or without prejudice. A further motion for voluntary dismissal
6 with prejudice will be granted if it is filed.

7 IT IS FURTHER ORDERED reaffirming the August 24, 2010 deadline for
8 Plaintiff to file a response to Defendants' Motion for Summary Judgment.

9 DATED this 19th day of August, 2010.

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Neil V. Wake
United States District Judge