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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY EMANUEL POLLARD,

CASE No. 1:09-cv-01232-LJO-MJS (PC)

Plaintiff,

VOLUNTARY DISMISSAL OF ACTION

v.

(ECF No. 48)

CLERK SHALL CLOSE CASE

K. HARRINGTON,

Defendant.

_____ /

Plaintiff Jerry Emanuel Pollard ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed on May 1, 2009 pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff declined to extend magistrate judge jurisdiction for all purposes and proceedings. (Decline Magistrate, ECF No. 9.)

The Complaint was dismissed for failure to state a claim, but with leave to amend. (Order Dismiss. Compl., ECF No. 16.) Plaintiff filed a First Amended Complaint on June 4, 2012. (First Am. Compl., ECF No. 21.) The First Amended Complaint was dismissed on August 30, 2012, for failure to state a claim, with leave to file a second amended complaint by not later than October 4, 2012. (Order Dismiss. First Am. Compl., ECF No. 41.)

1 The Court extended to October 29, 2012, the time for Plaintiff to file his second
2 amended complaint. (Order Grant. In Part Ext. Time, ECF No. 43.) The October 29,
3 2012 deadline passed without Plaintiff having filed a second amended complaint or a
4 request for an extension of time to do so. The Court issued an order that by not later
5 than November 29, 2012, Plaintiff file an amended complaint or show cause why his
6 case should not be dismissed for failure to comply with a court order and failure to state
7 a claim. (Order Show Cause, ECF No. 44.)

8 The November 29, 2012 deadline passed without Plaintiff complying with or
9 otherwise responding to the Court's order. The magistrate judge assigned to this case
10 filed findings and recommendations that this action be dismissed with prejudice based
11 on Plaintiff's failure to state a claim and failure to obey the Court's order. (F&R for
12 Dismissal, ECF No. 45.) The parties were advised that any objection to the findings
13 and recommendations was due by January 7, 2013. (Id. at 3:16-17.) Plaintiff filed, on
14 January 2, 2013, an affidavit requesting extension of time to file objections to the
15 findings and recommendations. (Aff. Ext. Time for Obj., ECF No. 46.) The Court
16 granted Plaintiff a further extension of time through February 11, 2013 to file his
17 objections to the findings and recommendations for dismissal. (Order Ext. Time., ECF
18 No. 47.)

19 On January 14, 2013, Plaintiff filed a motion with the Court asking that his case
20 be voluntarily dismissed. (Mot. Vol. Dismiss., ECF No. 48.)

21 Under Fed. R. Civ. P. 41(a)(1)(A), a plaintiff may dismiss an action without a
22 court order by filing a notice of dismissal. Plaintiff's motion requesting dismissal of his
23 case is read as a notice of dismissal.

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1 Accordingly, pursuant to Fed. R. Civ. P. 41, this action is hereby DISMISSED
2 without prejudice.

3 The Clerk shall CLOSE this case.
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11 IT IS SO ORDERED.

12 **Dated: January 16, 2013**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE