

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CURTIS LEE HENDERSON, SR.,

CASE NO. 1:09-cv-01402-SMS PC

Plaintiff,

ORDER GRANTING PLAINTIFF'S MOTION
FOR VOLUNTARY DISMISSAL; DIRECTING
THE CLERK'S OFFICE TO CLOSE THE
CASE; AND DENYING ALL PENDING
MOTIONS AS MOOT

v.

CALIFORNIA DEPARTMENT
OF CORRECTIONS AND
REHABILITATION, et al.,

(Docs. 9, 11, and 13)

Defendants.

Plaintiff Curtis Lee Henderson, Sr., a state prisoner proceeding pro se, filed this action on July 30, 2009, pursuant to 42 U.S.C. § 1983. Plaintiff was granted leave to proceed in forma pauperis on August 18, 2009. On February 10, 2010, after discovering that Plaintiff had three strikes, an order issued revoking Plaintiff's in forma pauperis status. On March 25, 2010, Plaintiff filed a "Motion for Voluntary Withdrawal Without Prejudice" (Doc. 11). On May 17, 2010, Plaintiff filed a "Notice of Voluntary Dismissal under Federal Rule Civil Procedure 41," in which he requested: (1) to voluntarily withdraw the case without prejudice; (2) that the voluntary withdrawal not operate as an adjudication upon the merits of the complaint; and (3) that the withdrawal be without prejudice to its refiling at a later date when the Plaintiff is able to pay the required filing fee. (Doc. 13).

Since Rule 41(a)(1)(B) notes that, unless noted otherwise, a dismissal thereunder "is without prejudice[, b]ut if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits" the Court

1 requested confirmation from Plaintiff of his desire to voluntarily dismiss this action even though the
2 end result might be that a voluntary dismissal would operate as an adjudication on the merits if
3 Plaintiff had previously dismissed any federal- or state-court action based on or including the same
4 claim(s). (Doc. 12.) Subsequently, Plaintiff filed a notice confirming his desire to voluntarily
5 dismiss this action.

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. Plaintiff's motion for voluntary withdrawal without prejudice filed on March 25,
8 2010 (Doc. 11) and Plaintiff's notice of voluntary dismissal under Federal Rule Civil
9 Procedure 41 (Doc. 13), are GRANTED;
- 10 2. the Clerk's Office is directed to close the case; and
- 11 3. all other pending motions are denied as moot.

12
13 IT IS SO ORDERED.

14 **Dated: May 26, 2010**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE