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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 CURTIS LEE HENDERSON, SR.,

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

10 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

11 v.

12 CALIFORNIA DEPARTMENT
13 OF CORRECTIONS AND
REHABILITATION, et al.,

(Docs. 9, 11, and 13)

14 Defendants.

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16 Plaintiff Curtis Lee Henderson, Sr., a state prisoner proceeding pro se, filed this action on
17 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
19 strikes, an order issued revoking Plaintiff's in forma pauperis status. On March 25, 2010, Plaintiff
20 filed a "Motion for Voluntary Withdrawal Without Prejudice" (Doc. 11). On May 17, 2010, Plaintiff
21 filed a "Notice of Voluntary Dismissal under Federal Rule Civil Procedure 41," in which he
22 requested: (1) to voluntarily withdraw the case without prejudice; (2) that the voluntary withdrawal
23 not operate as an adjudication upon the merits of the complaint; and (3) that the withdrawal be
24 without prejudice to its refiling at a later date when the Plaintiff is able to pay the required filing fee.
25 (Doc. 13).26 Since Rule 41(a)(1)(B) notes that, unless noted otherwise, a dismissal thereunder "is without
27 prejudice[, b]ut if the plaintiff previously dismissed any federal- or state-court action based on or
28 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.

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13 IT IS SO ORDERED.

14 Dated: May 26, 2010

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

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