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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

R. TOTH,,

1:09-cv-01432-GSA-PC

Plaintiff,

ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED

v.

ORDER FOR PLAINTIFF TO RESPOND
WITHIN THIRTY DAYS

MATTHEW CATE, et al.,

Defendants.

_____/

R. Toth ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 14, 2009. (Doc. 1.) On August 26, 2009, Plaintiff consented to Magistrate Judge jurisdiction in this action, and no other parties have made an appearance. (Doc. 4.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

On September 13, 2010, Plaintiff filed a motion with the Court under seal. (Doc.21.) With regard to Plaintiff's motion, the Court now requires Plaintiff to show cause why this case should not be dismissed pursuant to Rule 41(a)(1). "[U]nder Rule 41(a)(1)(I), 'a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.'" Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193

1 F.3d 1074, 1077 (9th Cir. 1999) (*quoting Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir.
2 1997)). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the
3 parties are left as though no action had been brought, the defendant can’t complain, and the
4 district court lacks jurisdiction to do anything about it.” *Id.* at 1078.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Within thirty days of the date of service of this order, Plaintiff shall file a written
7 response to this order, showing cause why this case should not be dismissed,
8 without prejudice, pursuant to Rule 41(a)(1);
- 9 2. In the alternative, Plaintiff may file a motion to voluntarily dismiss this case; and
- 10 3. Plaintiff’s failure to comply with this order shall result in the immediate dismissal
11 of this action for failure to obey a court order.

12
13 IT IS SO ORDERED.

14 **Dated: October 8, 2010**

/s/ Gary S. Austin
15 UNITED STATES MAGISTRATE JUDGE