

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RANDOLPH E. GARAUX,

1:10-cv-0158-SAB (PC)

Plaintiff,

ORDER GRANTING PLAINTIFF'S REQUEST FOR VOLUNTARY DISMISSAL

V.

ORDER DIRECTING CLERK OF COURT TO
CLOSE CASE AND ADJUST DOCKET TO
REFLECT VOLUNTARY DISMISSAL

MATTHEW L. CATE, et. al.,

Defendants.

(ECF No. 20)

Randolph E. Garaux (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action was filed on February 1, 2010. (ECF No. 1.) A first amended complaint was filed on June 3, 2011. (ECF No. 12.) On October 15, 2012, an order was issued requiring Plaintiff to either file an amended complaint or notify the Court of willingness to proceed only on cognizable claims. (ECF No. 15.) On January 8, 2013, an order was issued to dismiss claims against Defendants Cate and Trimble, and to direct service for Defendant Mills. (ECF No. 18.) On February 11, 2013, Plaintiff filed a notice of voluntary dismissal. (ECF No. 20.)

“[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.’”

1 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)
2 (*quoting Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997)). “[A] dismissal under
3 Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no
4 action had been brought, the defendant can’t complain, and the district court lacks jurisdiction to
5 do anything about it.” *Id.* at 1078. No defendant has filed an answer or other responsive
6 pleading.

7 Accordingly, the Clerk of the Court is HEREBY ORDERED to CLOSE the file in this
8 case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).
9 IT IS SO ORDERED.

10 **Dated: February 13, 2013**



UNITED STATES MAGISTRATE JUDGE