UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL A. OMARA,

Plaintiff,

v.

STEVEN SMITH, et al.,

Defendants.

_____/

CASE NO. 1:11-CV-00812-LJO-DLB PC

ORDER DIRECTING CLERK OF THE COURT TO DISMISS DEFENDANTS MATTHEW CATE AND J. CLARK KELSO PURSUANT TO PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL

(DOC. 14)

Plaintiff Michael A. Omara ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The action was removed from Tuolumne County Superior Court by Defendant J. Clark Kelso on May 18, 2011. Defendants Matthew Cate, Steven Smith, and Jack. St. Clair joined Defendant Kelso's removal.

Pending before the Court is Plaintiff's notice of voluntary dismissal of Defendants J. Clark Kelso and Matthew Cate, filed June 8, 2011. Doc. 14. Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the plaintiff may dismiss an action without court order by filing a notice of dismissal before the opposing party serves an answer or a motion for summary judgment. *See Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988) (noting partial dismissal of all claims against one or more defendants appropriate under Rule 41).

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Accordingly, it is HEREBY ORDERED that the Clerk of the Court is to dismiss Defendants J. Clark Kelso and Matthew Cate from this action pursuant to Plaintiff's notice of voluntary dismissal.

IT IS SO ORDERED.

Dated: October 3, 2011 **/s/ Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE