UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

) Case No.: 1:11-cv-01814 - JLT (PC)
) Case No.: 1:11-ev-01014 - JE1 (1 C)
ORDER CONSTRUING REQUEST FOR
) DISMISSAL (PER) 1819 CONSTRUCTIVE
) NOTICE TO ADDRESS AND REPLY TO MY
) ISSUE(S) WITH AN EXPEDITED REPLY AS A
) VOLUNTARY MOTION TO DISMISS
) ORDER GRANTING PLAINTIFF'S VOLUNTARY) MOTION TO DISMISS
) (Doc. 15).

Plaintiff William L. Stewart, Jr., ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. (Docs. 1, 5). Plaintiff consented to proceed before the jurisdiction of the Magistrate Judge April 19, 2013. (Doc. 12). On May 6, 2013, the Court dismissed Plaintiff's complaint (Doc. 1) and granted Plaintiff 21 days in which to file an amended complaint. (Doc. 14).

Plaintiff timely responded to the May 6, 2013, Order on May 17, 2013, by filing a motion entitled "Request for Dismissal (Per) 1819 Constructive Notice to Address and Reply to My Issue(s) with an Expedite[d] Reply." (Doc. 15). Plaintiff requests the Court to dismiss the matter without prejudice as to all claims and all parties. <u>Id</u>. Therefore, the Court construes this motion as a voluntary motion to dismiss.

A plaintiff is entitled to dismiss his or her litigation without a court order by filing a notice to

dismiss before any opposing parties appears in the action. Fed. R. Civ. P. 41(1)(A)(i). Plaintiff filed this matter on October 31, 2011. (Doc. 1). No defendants have been served. Thus, no defendant has appeared in the action and Plaintiff is entitled to dismiss his litigation. Therefore, the Plaintiff's request to voluntarily dismiss his action is **GRANTED**. **ORDER** Accordingly, the Court HEREBY ORDERS that: 1. Plaintiff's motion is **CONSTRUED** as a voluntary motion to dismiss under Fed. R. Civ. P. 41(1); 2. This action is **DISMISSED without prejudice**; and 3. The Clerk of the Court is **DIRECTED** to **CLOSE** this matter. IT IS SO ORDERED. /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE Dated: **May 21, 2013**