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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,

CASE NO. 1:12-cv-01644-BAM PC

Plaintiff,

ORDER GRANTING PLAINTIFF’S REQUEST
FOR VOLUNTARY DISMISSAL (ECF No. 7)

v.

LOIS P. ETCHEBERRY, et al.,

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

Defendants.

Plaintiff Gary Dale Barger (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action was filed on October 5, 2012. (ECF No. 1.) On March 7, 2013, Plaintiff moved to dismiss this action.

“[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 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can’t complain, and the district court lacks jurisdiction to do anything about it.” Id. at 1078. This action is currently in the screening phase and no defendant has filed an answer or other responsive pleading.

Accordingly, the Clerk of the Court is HEREBY ORDERED to CLOSE the file in this case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a). All pending motions are terminated.

IT IS SO ORDERED.

Dated: March 8, 2013

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE