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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TONY HERNANDEZ,	)	1:14-cv-001270-AWI-BAM-PC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATION
	)	THAT PLAINTIFF’S REQUEST FOR
v.	)	VOLUNTARY DISMISSAL BE GRANTED
	)	(ECF No. 11)
C. GIPSON, et al.,	)	
	)	OBJECTIONS DUE IN FOURTEEN DAYS
Defendants.	)	
	)	
	)	

Plaintiff Tony Hernandez is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 3, 2016, an order was entered, dismissing the complaint for failure to state a claim and granting Plaintiff leave to file an amended complaint. (ECF No. 10.) On February 22, 2016, Plaintiff filed a document titled as a “notice of motion and motion dismissing-revoking complaint in its entirety.” (ECF No. 11). The Notice states Plaintiff’s desire to “revoke my complaint entirely as there can be no redress within the United States Courts and there is no justice within the federal district courts.” (Id. P.4, 18:-20.) Following Plaintiff’s Notice to dismiss, this Court, on February 24, 2016, entered an order advising Plaintiff that he could cure the deficiencies in the complaint identified by the February 3, 2016, screening order. The Court granted Plaintiff thirty days in which to either file an amended complaint or a notice of voluntary dismissal. Plaintiff was specifically advised that if he failed to file an amended complaint or

1 notice of voluntary dismissal, a recommendation of dismissal would be entered, recommending  
2 that this action be dismissed, without prejudice, on Plaintiff's motion.

3 "[U]nder Rule 41(a)(1)(A)(i), a plaintiff has an absolute right to voluntarily dismiss his  
4 action prior to service by the defendant of an answer or a motion for summary judgment."  
5 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)  
6 (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no  
7 court order is required, the parties are left as though no action had been brought, the defendant  
8 can't complain, and the district court lacks jurisdiction to do anything about it." Id. at 1078. In  
9 this action, no defendant has been served and no defendant has filed an answer or motion for  
10 summary judgment. Plaintiff has not filed an amended complaint, notice of dismissal, or any  
11 other response to the February 24, 2016, order. No Defendant has been served, and no  
12 Defendant has entered an appearance in this action.

13 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without  
14 prejudice pursuant to Federal Rule of Civil Procedure 41(a), and the docket be adjusted to reflect  
15 voluntary dismissal of this action without prejudice pursuant to Rule 41(a).

16 These findings and recommendations will be submitted to the United States District  
17 Judge assigned to the case, pursuant to the provision of Title 28 U.S.C. § 636(b)(1)(B). Within  
18 **fourteen (14)** days after being served with these Findings and Recommendations, the parties  
19 may file written objections with the Court. The document should be captioned "Objections to  
20 Findings and Recommendations." The parties are advised that failure to file objections within  
21 the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d  
22 F.3d 834, 838-39 (9th Cir. 2014)(citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23  
24 IT IS SO ORDERED.

25 Dated: April 5, 2016

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
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