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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

THURMAN GAINES,	)	Case No.: 1:15-cv-00587-LJO-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER ADOPTING FINDINGS AND
v.	)	RECOMMENDATIONS REGARDING
	)	PLAINTIFF’S MOTION FOR VOLUNTARY
CALIFORNIA DEPT. OF CORRECTIONS,	)	DISMISSAL WITHOUT PREJUDICE PURSUANT
et al.,	)	TO FEDERAL RULE OF CIVIL PROCEDURE
	)	41(a)(2)
Defendants.	)	
	)	(ECF Nos. 42, 43)
	)	
	)	
	)	

Plaintiff Thurman Gaines is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds on Plaintiff’s Second Amended Complaint against Dr. E. Horowitz for deliberate indifference in violation of the Eighth Amendment. (ECF No. 19.) 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 July 14, 2017, the Court granted in Part Defendant’s motion to compel, and ordered that Plaintiff provide certain discovery responses to Defendant within thirty days. (ECF No. 38.) On August 24, 2017, Defendant filed a motion for sanctions for Plaintiff’s continued failure to provide

1 those discovery responses. (ECF No. 40.) Plaintiff did not respond to the motion for sanctions within  
2 the deadline permitted. Local Rule 230(1). However, on September 18, 2017, Plaintiff filed a notice of  
3 voluntary dismissal, without prejudice, pursuant to Federal Rule of Civil Procedure 41. (ECF No. 42.)

4 On September 20, 2017, the Magistrate Judge filed a Findings and Recommendations  
5 recommending that Plaintiff's notice be construed as a motion requesting dismissal without prejudice  
6 pursuant to Rule 41(a)(2). The Magistrate Judge further found that Defendant's legal rights concerning  
7 the production of the discovery would be prejudiced by a dismissal without prejudice in this case.  
8 Therefore, the Magistrate Judge recommended that the production of the discovery responses be a  
9 prerequisite to a voluntary dismissal without prejudice. (ECF No. 43.)

10 The Findings and Recommendations were served on the parties and contained notice that  
11 objections were to be filed within fourteen days. More than fourteen days have passed, and no  
12 objections were filed.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de  
14 novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and  
15 Recommendations to be supported by the record and by proper analysis.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. The Findings and Recommendations filed on September 20, 2017 (ECF No. 43) are  
18 adopted in full;

19 2. Plaintiff's motion for a voluntary dismissal without prejudice (ECF No. 42) is granted,  
20 on the condition that Plaintiff produces the discovery responses as set forth in the Court's July 14,  
21 2017 order;

22 3. Plaintiff shall file a notice that he has fulfilled the conditions for a voluntary dismissal  
23 with prejudice within thirty (30) days of the date of service of this order. Upon the filing of Plaintiff's  
24 notice of fulfillment, this matter shall be dismissed without prejudice; and

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