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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMIEN DWAYNE OLIVE,

Plaintiff,

v.

KELLY HARRINGTON, et al.,

Defendants.

Case No. 1:15-cv-01276-BAM (PC)

ORDER REGARDING PLAINTIFF’S
NOTICE OF VOLUNTARY DISMISSAL

(ECF No. 15)

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

Plaintiff Damien Dwayne Olive (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction. (ECF No. 5.) On May 12, 2017, the Court issued a screening order dismissing Plaintiff’s complaint for failure to state a claim, with leave to amend. (ECF No. 14.) Currently before the Court is Plaintiff’s motion to dismiss this action, without prejudice to refile the action. (ECF No. 15.)

“[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

1 can't complain, and the district court lacks jurisdiction to do anything about it." Id. at 1078. In
2 this action, no defendant has been served and no defendant has filed an answer or motion for
3 summary judgment.

4 Accordingly, the Clerk of the Court is HEREBY ORDERED to CLOSE the file in this
5 case and adjust the docket to reflect voluntary dismissal of this action without prejudice pursuant
6 to Rule 41(a). All pending motions, if any, are terminated.

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8 IT IS SO ORDERED.

9 Dated: June 16, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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