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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWIN GARCIA,)	1:16-cv-00237-BAM (PC)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
)	MOTION TO WITHDRAW LAWSUIT
v.)	(ECF No. 23)
)	
CALIFORNIA DEPARTMENT OF)	ORDER DIRECTING CLERK OF COURT
CORRECTIONS MEDICAL DEPARTMENT)	TO CLOSE CASE AND ADJUST DOCKET
OF DELANO,)	TO REFLECT VOLUNTARY DISMISSAL
)	
Defendant.)	
)	
)	

Plaintiff Edwin Garcia (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff initiated this action on February 19, 2016. Plaintiff consented to the jurisdiction of a United States Magistrate Judge. (ECF No. 8).

On January 20, 2017, Plaintiff filed a document entitled “Motion to Withdraw 42 U.S.C. § 1983 Lawsuit.” Plaintiff requests that the Court grant his motion to withdraw the complaint against the California Department of Corrections Medical Department of Delano. Plaintiff states that he will pursue his state claims and causes of action beyond the jurisdiction of this Court. (ECF No. 23).

The Court construes Plaintiff’s motion as one requesting voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). “[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

1 answer or a motion for summary judgment.” *Commercial Space Mgmt. Co., Inc. v. Boeing Co.,*
2 *Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). “[A] dismissal under
3 Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no
4 action had been brought, the defendant can’t complain, and the district court lacks jurisdiction to
5 do anything about it.” *Id.* at 1078. In this action, there is no operative complaint on file, no
6 defendant has been served and no defendant has filed an answer or motion for summary
7 judgment. Accordingly, the Clerk of the Court will be directed to close the file in this case and
8 adjust the docket to reflect voluntary dismissal of this action.

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. The Clerk of the Court is ORDERED to CLOSE the file in this case and adjust the
11 docket to reflect voluntary dismissal of this action without prejudice pursuant to Rule
12 41(a); and
13 2. All pending motions, if any, are terminated.

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15 IT IS SO ORDERED.

16 Dated: January 25, 2017

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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