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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUSTIN BRACKEN,
Plaintiff,
v.
DURAN, et al.,
Defendants.

Case No. 1:17-cv-00306-AWI-JLT (PC)
ORDER CLOSING THE CASE BASED UPON
PLAINTIFF'S VOLUNTARY DISMISSAL
(Doc. 16)

On June 20, 2017, the Court screened the Complaint and dismissed it with leave to amend to allow Plaintiff to cure the deficiencies noted; alternatively, Plaintiff could file a notice of voluntary dismissal. (Doc. 15.) In response, Plaintiff filed a notice that he is “not ready to go through with” this action until he goes “home and find (sic) me a lawyer (sic) will represent me. Bye thank you and God bless.” (Doc. 16.) It appeared that Plaintiff intends to voluntarily dismiss this action. However, because the filing was a bit vague, the Court ordered the plaintiff to file a statement indicating whether he wished to voluntarily dismiss the action. (Doc. 17.) That order warned that if Plaintiff failed to file a statement, the Court would presume that he *did* intend to dismiss the matter without prejudice under Rule 41. (Doc. 17.) The plaintiff did not respond.

The Ninth Circuit has explained:

Under Rule 41(a)(1), 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. *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing *Hamilton v. Shearson-Lehman American Express*, 813 F.2d 1532, 1534 (9th

1 Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a
2 notice of dismissal prior to the defendant's service of an answer or motion for
3 summary judgment. The dismissal is effective on filing and no court order is
4 required. *Id.* The plaintiff may dismiss some or all of the defendants, or some
5 or all of his claims, through a Rule 41(a)(1) notice. *Id.*; *Pedrina v. Chun*, 987
6 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal
7 with the court automatically terminates the action as to the defendants who are
8 the subjects of the notice. *Concha*, 62 F.2d at 1506. Unless otherwise stated,
the dismissal is ordinarily without prejudice to the plaintiff's right to
commence another action for the same cause against the same defendants. *Id.*
(citing *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934-35
(9th Cir. 1987)). Such a dismissal leaves the parties as though no action had
been brought. *Id.*

9 *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).

10 No defendant has appeared in this case. Because Plaintiff has exercised his right to
11 voluntarily dismiss the complaint under Rule 41(a)(1), this case has terminated. *See Wilson*, 111
12 F.3d at 692. Therefore, the Clerk is directed to close this case in light of Plaintiff's Rule
13 41(a)(1)(i) requested dismissal without prejudice.

14
15 IT IS SO ORDERED.

16 Dated: August 9, 2017

/s/ Jennifer L. Thurston
17 UNITED STATES MAGISTRATE JUDGE