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

JAMES W. MILLNER,

Plaintiff,

v.

DR. DILEO, et al.,

Defendants.

Case No.: 1:17-cv-00507-LJO-SAB (PC)

ORDER REGARDING PLAINTIFF’S  
MOTION TO DISMISS CLAIMS FOUND  
COGNIZABLE AGAINST CHIEF  
MEDICAL EXAMINER

[ECF No. 37]

Plaintiff Marcellas Hoffman is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds on Plaintiff’s claim against Defendants DiLeo, Ulit, Spaeth, and the Chief Medical Examiner, in their individual capacity, for deliberate indifference in violation of the Eighth Amendment based on his wrist injury.

Currently before the Court is Plaintiff’s motion to dismiss claims found cognizable against Chief Medical Examiner, filed on May 25, 2018. (ECF No. 37.) In his motion, Plaintiff states that he was given thirty days to amend his complaint to name the Chief Medical Examiner. Plaintiff states that he prefers to proceed only on his claims found cognizable against Defendants DiLeo, Spaeth, and Ulit, and to dismiss his claim against the Chief Medical Examiner. Based on the foregoing, the Court construes his motion as a notice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

“[U]nder Rule 41(a)(1)(A)(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.’”

1 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)  
2 (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has  
3 held that Rule 41(a) allows a plaintiff to dismiss without a court order any defendant who has yet  
4 to serve an answer or motion for summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th  
5 Cir. 1993). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required,  
6 the parties are left as though no action had been brought, the defendant can’t complain, and the  
7 district court lacks jurisdiction to do anything about it.” Commercial Space Mgmt. Co., Inc., 193  
8 F.3d at 1078.

9 In this action, the Chief Medical Examiner has not been served and has not filed any  
10 answer or motion for summary judgment.

11 Accordingly, Plaintiff’s motion to dismiss (ECF No. 37) is construed as a notice of  
12 voluntary dismissal as stated above, and the Clerk of Court is HEREBY ORDERED to terminate  
13 Defendant Chief Medical Examiner.

14 IT IS SO ORDERED.

15 Dated: June 5, 2018

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18 UNITED STATES MAGISTRATE JUDGE  
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