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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL B. WILLIAMS,  
Plaintiff,  
vs.  
BRENNA REGO, et al.,  
Defendants.

1:17-cv-01273-GSA-PC

**ORDER FOR PLAINTIFF TO NOTIFY  
THE COURT WHETHER HE WISHES TO  
VOLUNTARILY DISMISS THIS CASE  
WITHOUT PREJUDICE  
30-DAY DEADLINE**

**I. BACKGROUND**

Michael B. Williams (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 25, 2017. (ECF No. 1.) The court screened the Complaint under 28 U.S.C. § 1915A and issued an order on July 18, 2018, dismissing the Complaint for failure to state a claim, with leave to file an amended complaint within thirty days. (ECF No. 9.)

1 On July 30, 2018, Plaintiff filed a request to voluntarily dismiss this case, without  
2 prejudice and without giving up his appeal rights. (ECF No. 10.)

3 **II. RULE 41**

4 Plaintiff has a right to voluntarily dismiss this case under Rule 41 of the Federal Rules  
5 of Civil Procedure. In Wilson v. City of San Jose, the Ninth Circuit explained:

6  
7 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily  
8 dismiss his action prior to service by the defendant of an answer or a motion for  
9 summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995)  
10 (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534  
11 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files  
12 a notice of dismissal prior to the defendant's service of an answer or motion for  
13 summary judgment. The dismissal is effective on filing and no court order is  
14 required. Id. The plaintiff may dismiss some or all of the defendants, or some  
15 or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987  
16 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal  
17 with the court automatically terminates the action as to the defendants who are  
18 the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated,  
19 the dismissal is ordinarily without prejudice to the plaintiff's right to commence  
20 another action for the same cause against the same defendants. Id. (citing  
21 McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir.  
22 1987)). Such a dismissal leaves the parties as though no action had been  
23 brought. Id.

24 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). Here, no defendant has filed an  
25 answer or motion for summary judgment in this case. Therefore, Plaintiff has an absolute right  
26 to voluntarily dismiss this case under Rule 41 by filing a notice of dismissal.

27 Plaintiff seeks to voluntarily dismiss this case, without prejudice, and without giving up  
28 his appeal rights. Plaintiff is advised that in most cases, if a plaintiff voluntarily dismisses his  
case without prejudice, he gives up his appeal rights as explained in the paragraphs that follow.  
For this reason, Plaintiff shall be required to notify the court within 30 days whether he wishes  
to voluntarily dismiss this case without prejudice.

**Voluntary Dismissal Without Prejudice**

“A voluntary dismissal without prejudice is not averse to the plaintiff's interests.”  
Concha v. London, 62 F.3d 1493, 1507 (9th Cir. 1995). “The plaintiff is free to seek an  
adjudication of the same issue at another time in the same or another forum.” Id. However,  
“[a] voluntary dismissal *without prejudice* is ordinarily *not* a final judgment from which the

1 plaintiff may appeal.” Storman v. Office of Sec’y, United States, DHHS, 727 F. App’x 454, 455  
2 (9th Cir. 2018) (quoting Concha, 62 F.3d at 1506). In fact, the court of appeals “lacks  
3 jurisdiction to review the dismissal if an action is voluntarily dismissed *without prejudice*.” Id.  
4 (emphasis added); WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1135 (9th Cir. 1997) (en banc)  
5 (issue of jurisdiction must be raised *sua sponte*).

6 Therefore, if Plaintiff voluntarily dismisses this case *without prejudice*, he will lose his  
7 right to appeal the dismissal.

### 8 **Voluntary Dismissal With Prejudice**

9 On the other hand, “[a] voluntary dismissal *with prejudice* permits the appellate court to  
10 review the action of the district court that the plaintiff believes to be determinative of his  
11 claim—the action that caused him to dismiss his case.” Concha, 62 F.3d at 1507 (emphasis  
12 added). “If the plaintiff prevails on appeal, and the determinative district court ruling is  
13 reversed, then his claim is remanded to the district court for further proceedings.” Id.  
14 “However, if the plaintiff is unsuccessful in challenging the district court’s action, then the  
15 dismissal operates as an adjudication on the merits and the litigation is terminated.” Id. “Thus,  
16 a plaintiff who voluntarily dismisses his action *with prejudice*, and thereby secures review of an  
17 order that would not ordinarily be reviewable until after a trial on the merits, runs a serious risk  
18 of losing his claim entirely.” Id. at 1507-08. “Should the appellate court reject his appeal, the  
19 dismissal of his action with prejudice stands.” Id. at 1508. “The plaintiff is precluded from  
20 bringing another action for the same cause, thus forfeiting any possibility of ever obtaining a  
21 favorable determination on the merits.” Id.

### 22 **III. CONCLUSION AND ORDER**

23 The court finds that Plaintiff has an absolute right to voluntarily dismiss this case under  
24 Rule 41 by filing a notice of dismissal. However, if Plaintiff voluntarily dismisses this case  
25 *without prejudice*, he shall lose his right to appeal the dismissal. Plaintiff is therefore required  
26 to notify the court, in writing, within 30 days whether he wishes to voluntarily dismiss this case  
27 *without prejudice*, losing his right to appeal the dismissal.

28 Accordingly, **IT IS HEREBY ORDERED** that:

1           1.       Within 30 days of the date of service of this order, Plaintiff is required to notify  
2 the court in writing whether he wishes to voluntarily dismiss this case *without prejudice* and  
3 lose his right to appeal the judgment; and

4           2.       Plaintiff's failure to comply with this order shall result in a recommendation that  
5 this case be dismissed for failure to comply with the court's order.

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7 IT IS SO ORDERED.

8       Dated: July 31, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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