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

CHARLES F. JUSTUS IV,  
Plaintiff,  
v.  
DELACRUZ, et al.,  
Defendants.

**1:20-cv-00241-DAD-GSA-PC**

**ORDER RE PLAINTIFF’S NOTICE OF  
VOLUNTARY DISMISSAL UNDER  
RULE 41, WITHOUT PREJUDICE  
(ECF No. 19.)**

**ORDER WITHDRAWING FINDINGS AND  
RECOMMENDATIONS ISSUED ON MARCH  
26, 2021  
(ECF No. 18.)**

**ORDER DIRECTING CLERK TO CLOSE FILE**

Charles F. Justus IV (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On February 18, 2020, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On February 25, 2020, the court screened the Complaint and issued an order dismissing the Complaint for failure to state a claim, with leave to amend. 28 U.S.C § 1915. (ECF No. 9.) On March 23, 2020, Plaintiff filed the First Amended Complaint. (ECF No. 11.)

1 On March 26, 2021, the court issued findings and recommendations, recommending that  
2 this case be dismissed, with prejudice, for Plaintiff's failure to state a claim. (ECF No. 18.)  
3 Plaintiff was granted fourteen days to file objections to the findings and recommendations. (Id.)

4 On April 14, 2021, Plaintiff filed a request to voluntarily dismiss this case, without  
5 prejudice. (ECF No. 19.) Plaintiff maintains that he lacked knowledge and experience in filing  
6 a complaint and now knows that the proper court for his case is a lower state court and the issue  
7 in his case is a tort and not a constitutional violation. (Id.) The court construes Plaintiff's request  
8 as a notice of dismissal under Rule 41.

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

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

17 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No defendant has filed an answer  
18 or motion for summary judgment in this case. Therefore, Plaintiff's notice of dismissal is  
19 effective as of the date it was filed, and this case shall be closed. The court shall withdraw the  
20 findings and recommendations issued on March 26, 2021.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's notice of dismissal is effective as of the date it was filed;
- 23 2. This case is DISMISSED in its entirety without prejudice;
- 24 3. The findings and recommendations issued on March 26, 2021, are withdrawn; and

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