

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

FRANK VALLES.

Plaintiff,

V_a

GAMBOA, *et al.*,

Defendants.

Case No. 1:22-cv-00355-ADA-BAM (PC)

ORDER REGARDING PLAINTIFF'S
MOTION TO DISMISS THIS ACTION

(ECF No. 11)

Plaintiff Frank Valles (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. On April 29, 2022, the Court screened the complaint and issued findings and recommendations recommending dismissal of this action based on Plaintiff’s failure to state a cognizable claim upon which relief may be granted. (ECF No. 8.) Plaintiff timely filed objections on May 16, 2022. (ECF No. 9.)

On September 14, 2022, Plaintiff filed a motion to dismiss this action, with prejudice. (ECF No. 11.)

“[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 answer or a motion for summary judgment.” *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can’t complain,

1 and the district court lacks jurisdiction to do anything about it.” *Id.* at 1078. No defendant has
2 been served in this action and no defendant has filed an answer or motion for summary
3 judgment.

4 Accordingly, this action is terminated, with prejudice, by operation of law without further
5 order from the Court. Fed. R. Civ. P. 41(a)(1)(A)(i). The Clerk of the Court is directed to
6 terminate all pending motions and deadlines, including the pending findings and
7 recommendations, and close this case.

8
9 IT IS SO ORDERED.

10 Dated: September 15, 2022

11 /s/ Barbara A. McAuliffe
12 UNITED STATES MAGISTRATE JUDGE

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28