

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA  
ex rel. GENE L. ROGERS, M.D.,

NO. CIV.S-03-1658 LKK DAD PS

Plaintiff,

V.

O R D E R

COUNTY OF SACRAMENTO, et al.,

## Defendants.

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17        This case was filed in 2003 as a *qui tam* action under the  
18 False Claims Act and the California False Claims Act. On July 21,  
19 2006, the court adopted the Findings and Recommendations of the  
20 magistrate judge, dismissing the case without prejudice on the  
21 grounds that private parties bringing *qui tam* actions may not  
22 proceed *pro se*. Judgment was entered on that date. Pending before  
23 the court is plaintiff's motion to reopen the case, on the  
24 grounds that he is now represented by counsel.

25 As defendant correctly points out, an action that has been  
26 dismissed cannot be "reopened," as it is no longer pending. See,

1 e.g., United States v. California, 932 F.2d 1346, 1351 (9th Cir.  
2 1991), aff'd, 507 U.S. 745 (1993); Humphreys v. United States,  
3 272 F.2d 411 (9th Cir. 1959). The dismissal, including one  
4 without prejudice, "terminates the action and concludes the  
5 rights of the parties in that particular action." United States  
6 v. California, 507 U.S. 746, 756 (1993) (internal citations  
7 omitted). Because the dismissal was without prejudice in this  
8 case plaintiff was permitted to refile it asserting the same  
9 claims. See generally Black's Law Dictionary (8th ed. 2004). The  
10 court's order that the action was dismissed without prejudice "to  
11 renewal by plaintiff through a licensed attorney, or by the  
12 United States or the State of California," instructed the  
13 plaintiff as to the condition that he must meet in order to  
14 properly refile the case. It did not alter the legal effect of  
15 the dismissal, as plaintiff suggests. Accordingly, plaintiff's  
16 motion must be denied. Should he wish to pursue the claims he  
17 asserted in this case, the proper approach is to file a new  
18 suit.<sup>1</sup>

19 For the reasons stated herein, plaintiff's motion to reopen  
20 the case (Doc. No. 322) is DENIED.

21 IT IS SO ORDERED.

22 DATED: April 2, 2009.

Lawrence K. Karlton  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

25       <sup>1</sup>Plaintiff has not moved to vacate the judgment. It appears  
26 to the court that such a motion, if brought, would not be timely.  
See Fed. R. Civ. P. 59(e).