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

10 JOHN CARD,

11 Plaintiff,

No. CIV S-06-1027 GEB GGH P

12 vs.

13 TOM L.CAREY, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to
17 42 U.S.C. § 1983. On January 2, 2008, defendant Nunez filed a summary judgment motion. On
18 January 10, 2008, plaintiff filed a response to this motion. Plaintiff states that he does not
19 oppose the motion, but reserves the right to re-file charges against defendant Nunez.

20 The court does not construe plaintiff's January 10, 2008, pleading as a statement
21 of non-opposition to defendant's motion based on plaintiff's request that he be allowed to "re-
22 file" charges against defendant Nunez. If the court grants defendant's motion for summary
23 judgment, plaintiff will most likely be precluded from refileing his claims against defendant.
24 For these reasons, the court construes plaintiff's response as a request to voluntarily dismiss the
25 claims against defendant Nunez.

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1 Accordingly, IT IS HEREBY ORDERED that defendant Nunez shall notify this
2 court, within ten days, whether he has any objection to the dismissal of the claims against him.
3 Should defendant fail to respond, plaintiff's request will be granted pursuant to Fed. R. Civ. P.
4 41(a)(2).

5 DATED: 02/04/08

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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