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

THOMAS JOHN HEILMAN,  
Plaintiff,  
v.  
N. FRY, et al.,  
Defendants.

NO. CV-08-2478-JLQ

**ORDER OF DISMISSAL**

On October 16, 2009, Plaintiff filed a Request to Withdraw/Dismiss Complaint (Ct. Rec. 10). Plaintiff therein acknowledges having reviewed the court's screening order, which identified the claims which were not viable because of the ongoing *Coleman* litigation and the claims which might have been cured by amendment. Plaintiff's request to withdraw, however, states that because his "claims *centered* on the arguments identical to the *Coleman* claims, Plaintiff does not believe he can cure the pleading defects and requests the court withdraw/dismiss the complaint. Plaintiff does not seek to file an amended complaint." Ct rec. 10 (emphasis added).

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, plaintiff is entitled to dismiss this action voluntarily "by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." Fed.R.Civ.P. 41(a)(1)(i). Defendants have not been served in this action. Accordingly, **IT IS ORDERED** Plaintiff's Motion (Ct. Rec. 10) is

1 **GRANTED** and the Complaint (Ct. Rec. 1) should be **DISMISSED WITHOUT**  
2 **PREJUDICE.**

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
4 this Order, enter judgment of dismissal of the Complaint and the claims therein without  
5 prejudice, forward a copy to Plaintiff, and close the file.

6 **DATED** this 23rd day of October 2009.

7 s/ Justin L. Quackenbush  
8 **JUSTIN L. QUACKENBUSH**  
9 **SENIOR UNITED STATES DISTRICT JUDGE**

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