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

DOUGLAS J. WINSTON,	)	Case No. 2:08-cv-03140-MSB
Plaintiff,	)	<b>ORDER</b>
vs.	)	
JAMES TILTON, D.K. SISTO, V. SINGH, and T. SEQUIRA,	)	
Defendants.	)	

Plaintiff Douglas J. Winston, who is currently confined in the California State Prison, Solano in Vacaville, CA, has filed a motion to dismiss without prejudice his *pro se* civil rights complaint pursuant to Federal Rule of Civil Procedure 41(a). (Dkt. #20). The Court will construe Winston’s motion to dismiss as a notice of voluntary dismissal under Rule 41(a)(1)(A),<sup>1</sup> and so dismiss the action without prejudice and direct the Clerk of the Court to close the case.

**Accordingly,**

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<sup>1</sup>Federal Rule of Civil Procedure 41(a)(1)(A) provides that a plaintiff may dismiss an action without a court order by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” FED. R. CIV. P. 41(a)(1)(A)(i). The opposing parties in this case have not filed either an answer or a motion for summary judgment. *See generally Swedberg v. Marotzke*, 339 F.3d 1139 (9th Cir. 2003) (discussing Rule 41(a)(1)).

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**IT IS HEREBY ORDERED** that Plaintiff's Motion to Dismiss (Dkt. #20) is **granted.**

**IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

DATED this 14th day of July, 2010.

/s/ Marsha S. Berzon  
MARSHA S. BERZON  
United States Circuit Judge, sitting by designation