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

JEROME MONTGOMERY,

Plaintiff,

No. CIV S-09-2705 LKK DAD P

vs.

CHIEF MEDICAL OFFICE,

Defendant.

ORDER

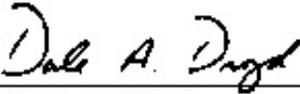
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On October 13, 2010, plaintiff, a state prisoner proceeding pro se, filed a request that this action be dismissed. On October 6, 2010, the court had filed findings and recommendations recommending that this action be dismissed for failure to state a claim. Under Rule 41(a), plaintiff may voluntarily dismiss this action without a court order if the defendant has not served an answer or a motion for summary judgment. Am. Soccer Co. v. Score First Enters., 187 F.3d 1108, 1112 (9th Cir. 1999). No answer or motion for summary judgment has been filed on behalf of the defendant in this case. Therefore, pursuant to Fed. R. Civ. P. 41(a), plaintiff's request for voluntary dismissal shall be honored.

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1 Accordingly, IT IS HEREBY ORDERED that the findings and recommendations
2 filed October 6, 2010 (Doc. No. 16) are vacated and this action is dismissed.

3 DATED: October 20, 2010.

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7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

7 DAD:4
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