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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH LAVERY,
Plaintiff,
v.
B. DHILLON et al.,
Defendants.

No. 2:13-cv-2083 MCE AC P

MEMORANDUM AND ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 29, 2016, the magistrate judge filed an order and findings and recommendations recommending that plaintiff’s motion for preliminary injunctive relief and a temporary restraining order be denied, and, in response to plaintiff’s “motion to dismiss without prejudice,” directing plaintiff to file a notice clarifying whether he wishes to proceed with this action. ECF No. 108. The findings and recommendations were served on all parties and contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Defendants have filed objections to the findings and recommendations, ECF Nos. 109 & 110, as has plaintiff, ECF No. 111.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
3 Court finds the findings and recommendations to be supported by the record and by proper
4 analysis.

5 In their objections, defendants assert the magistrate judge lacked authority once Plaintiff
6 filed his “motion to dismiss without prejudice,” ECF No. 101, which constituted a notice of
7 voluntary dismissal under Rule 41(a)(1) and was effective upon filing. See Fed. R. Civ. P.
8 41(a)(1) ([T]he plaintiff may dismiss an action without order of the court . . . by filing a notice of
9 dismissal at any time before service by the adverse party of an answer or motion for summary
10 judgment.”); Pedrina v. Chun, 987 F.2d 608, 610 (9th Cir. 1993) (“The filing of the notice [of
11 dismissal under Rule 41(a)(1)] itself closes the file.”) (internal citations and alterations omitted).

12 “Courts in this circuit have an obligation to give a liberal construction to the filings of pro
13 se litigants, especially when they are civil rights claims by inmates,” Blaisdell v. Frappiea, 729
14 F.3d 1237, 1241 (9th Cir. 2013). In the instant case, plaintiff’s “motion to dismiss” was
15 equivocal: plaintiff appeared to assert that he wished to continue seeking relief, but could not
16 move forward without assistance from the court or some other source. See ECF No. 101 at 1-5.
17 Accordingly, the magistrate judge provisionally construed plaintiff’s motion as a request for
18 additional assistance, see ECF No. 108 at 5:7-12, an apparently accurate construction based on
19 plaintiff’s subsequent filings, see ECF Nos. 104, 105, 106, 107, 111. Because plaintiff’s “motion
20 to dismiss” was not clearly a notice of voluntary dismissal under Rule 41(a)(1), the filing of the
21 motion did not operate to close this action, and the magistrate judge acted within her authority to
22 adjudicate plaintiff’s motion for injunctive relief.

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. The findings and recommendations filed August 29, 2016 are adopted in full;

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2. Plaintiff's motion for preliminary injunctive relief and a temporary restraining order (ECF No. 81) is DENIED.

IT IS SO ORDERED. Dated: September 30, 2016


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE