

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL RAYMOND BAUER,
Plaintiff,
v.
JEFF MACOMBER, et al.,
Defendants.

No. 2:14-cv-2028 AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c) and Local Rule 305(a). ECF No. 6.

By order filed January 13, 2015, plaintiff’s complaint was dismissed and thirty days leave to file an amended complaint was granted. ECF No. 9. Plaintiff’s first request for extension of his time to file an amended complaint was granted on March 10, 2015. ECF No. 14. On March 25, 2015, plaintiff was granted an additional thirty days in which to file an amended complaint. ECF No. 18. The time to file an amended complaint passed and plaintiff did not file an amended complaint or otherwise responded to the court’s order. On May 18, 2015, the court issued an order advising plaintiff that if he did not file an amended complaint within thirty days, this action would be dismissed pursuant to Federal Rule of Civil Procedure 41(b). ECF No. 19. Plaintiff has now filed a motion seeking to voluntarily dismiss the case so that he can re-file his lawsuit once

1 he is released from prison and no longer subject to the restrictions of the Prison Litigation Reform
2 Act. ECF No. 20. He also requests that his filing fee in this case be suspended and his
3 application for in forma pauperis status be transferred once he files his new case. Id.

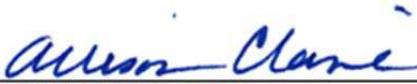
4 Federal Rule of Civil Procedure 41(a)(1) allows a plaintiff to voluntarily dismiss an action
5 without prejudice without an order of the court if the opposing party has not yet filed an answer
6 or motion for summary judgment or a stipulation of dismissal has been signed by all parties who
7 have appeared. Since defendants have not yet been served, and have therefore not filed an answer
8 or motion for summary judgment, it was not necessary for plaintiff to request an order dismissing
9 the case. The court will therefore grant plaintiff's motion and dismiss this action without
10 prejudice. However, plaintiff's request to suspend the filing fee in this case and transfer his
11 application for in forma pauperis will be denied. Plaintiff's decision to exercise his right to
12 voluntarily dismiss this case does not excuse him from the filing fee. If plaintiff seeks in forma
13 pauperis status in any subsequently filed action, he should complete an application for such status
14 when he files the complaint.

15 Accordingly, IT IS HEREBY ORDERD that

16 1. Plaintiff's motion to suspend the filing fee and transfer his application for in forma
17 pauperis status upon filing of a new case (ECF No. 20) is denied.

18 2. Plaintiff's motion to dismiss this action without prejudice (ECF No. 20) is granted.

19 DATED: June 23, 2015

20 
21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28