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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE PARKS,
Plaintiff,
v.
JEFFREY ROLFING, et al.,
Defendants.

No. 2:15-cv-1505 CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On July 29, 2015, plaintiff’s original complaint was dismissed with leave to amend, as “[i]t is not clear whether plaintiff has completed the exhaustion process as to any of the defendants.” (ECF No. 7 at 3.)

On September 24, 2015, plaintiff’s First Amended Complaint was dismissed for failure to state a cognizable claim against any defendant. (ECF No. 18.) Plaintiff was again granted leave to amend. (Id.)

On February 19, 2016, plaintiff filed a Second Amended Complaint. (ECF No. 24.) In it, plaintiff indicates that he has completed the prison grievance process as to the facts alleged. (Id. at 2.) Normally the court would proceed to screen the complaint under 28 U.S.C. § 1915A(a).

However, on March 30, 2016, plaintiff filed a “motion to suspend case.” (ECF No. 25.) He asks that this action be suspended “until my government claim is processed.” (Id.) It is not

1 clear what government claim plaintiff refers to or how it bears on this action. At any rate, there is
2 no mechanism for suspending a § 1983 civil rights action while a plaintiff pursues state remedies.

3 Plaintiff may choose to proceed on the Second Amended Complaint, or he may
4 voluntarily dismiss this action pursuant to Fed. R. Civ. P. 41(a). Assuming it was plaintiff's first
5 voluntary dismissal of the instant claims, the dismissal would be without prejudice to refileing the
6 claims in federal court. See Pedrina v. Chun, 987 F.2d 608, 610 n. 3 (9th Cir. 1993) ("A
7 dismissal under Rule 41(a)(1)(i) is without prejudice, unless the plaintiff had already dismissed
8 the action once before."). However, any new action would be subject to the statute of limitations
9 that ran in the interim between actions.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's motion to suspend case (ECF No. 25) is denied; and
- 12 2. No later than thirty days from the date of this order, plaintiff shall inform the court
13 whether he wishes to proceed on the Second Amended Complaint or voluntarily dismiss this
14 action under Rule 41(a).

15 Dated: April 8, 2016

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18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE
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