

1 order on February 11, 2019, taking the motion under submission and instructing plaintiff to file
2 his opposition by March 20, 2019. ECF No. 23. Plaintiff was cautioned that failure to file an
3 opposition would be considered a statement of non-opposition to dismissal. Id. Plaintiff did not
4 file an opposition or take any other action to prosecute his case. On March 26, 2019, the court
5 issued findings and recommendations, recommending that the action be dismissed without
6 prejudice for lack of prosecution and for failure to comply with the court's orders. ECF No. 25.

7 II. NOTICE OF VOLUNTARY DISMISSAL

8 On April 12, 2019, plaintiff filed an untitled document stating as follows:

9 I deeply regret that I must drop my case. I believed I did have good cause and wished
10 to continue, but what happened was obvious enough to make me understand that I
11 need to stop here. I have had so much stress and anxiety, that I don't believe I can
12 follow through any further. I thought it meant that whether or not I replied it meant
that I wished to proceed. To me a sign that I'm too symptomatic to continue. I
apologize for wasting the courts time.

13 ECF No. 26.

14 The court construes this filing as a notice of voluntary dismissal pursuant to Fed. R. Civ.
15 P. 41(a)(1)(A)(i). As defendant has not yet filed either an answer or a motion for summary
16 judgment, it is plaintiff's right to terminate the action. Concha v. London, 62 F.3d 1493, 1506
17 (9th Cir. 1995) (under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to dismiss his
18 action prior to service by the defendant of an answer or a motion for summary judgment, even if
19 the defendant has filed a motion to dismiss).

20 III. CONCLUSION

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's April 12, 2019 filing (ECF No. 26) is construed as a notice of voluntary
23 dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i);
- 24 2. The court's March 26, 2019 findings and recommendations (ECF No. 25) are
25 VACATED;
- 26 3. All dates pending before the undersigned are VACATED; and


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4. The Clerk of the Court is directed to close the case.

IT IS SO ORDERED.

DATED: April 18, 2019



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE