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

United States District Court  
Northern District of California

RONALD HENRY,  
  
Plaintiff,  
  
v.  
  
STATE OF CALIFORNIA  
DEPARTMENT OF CHILD SUPPORT  
SERVICES, et al.,  
  
Defendants.

Case No.: 11-3255 (JSC)  
  
**ORDER DISMISSING THIS ACTION  
WITHOUT PREJUDICE**

Plaintiff, proceeding pro se, filed an amended complaint challenging the constitutionality of various government efforts to collect delinquent child support payments. The California Department of Child Support Services is the only remaining Defendant in this action. (Dkt. No. 25.) Now pending before the Court is Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint. (Dkt. No. 39.) In lieu of filing a response to this motion, Plaintiff petitioned the Court to dismiss this case as moot due to an ongoing state court action. (Dkt. No. 48.) The Court GRANTS Plaintiff’s request and dismisses this action without prejudice.

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1 Plaintiff filed an amended complaint in two parts: an amended complaint and a  
2 supplement to the amended complaint. (Dkt. Nos. 16, 23.) In this amended complaint,  
3 Plaintiff appeared to dismiss all claims against the federal government (Dkt. No. 23 at 2), and  
4 the Court dismissed the State of Alaska as a defendant due to lack of personal jurisdiction.  
5 (Dkt. No. 25 at 4.) Plaintiff later argued that he only intended to agree to dismiss the United  
6 States Department of State as a defendant, and the Department of Health and Human Services  
7 (“DHHS”) was therefore improperly dismissed. (Dkt. No. 35 at 7.) The Court previously held  
8 that Plaintiff did not have standing to bring his claim against the federal government for  
9 theoretically denying him access to a passport since he had not actually applied for a passport.  
10 (Dkt. No. 25 at 2.) As it was not clear if Plaintiff alleged any other specific harms suffered as  
11 a result of the federal government in general or DHHS in particular, the Court ordered  
12 Plaintiff to show cause as to why DHHS was a proper defendant in this action. (Dkt. No. 38.)  
13 Plaintiff declined to file a response.

14 Plaintiff also filed numerous motions to withdraw his consent (Dkt. No. 6) to a  
15 magistrate judge (Dkt. Nos. 26, 34, 35), which were denied (Dkt. No. 38). Plaintiff then filed  
16 an uncertified appeal with the Ninth Circuit. (Dkt. No. 41.) Plaintiff also filed a Motion to  
17 Stay Case Pending Appeal. (Dkt. No. 42.) The Court denied this motion but granted Plaintiff  
18 an additional week to file his response both to Defendant’s motion to dismiss and the Court’s  
19 order to show cause regarding DHHS. (Dkt. No. 44.) Plaintiff missed this extended deadline,  
20 and the Court ordered Plaintiff to file any response forthwith. (Dkt. No. 47.) Plaintiff opted  
21 not to file either response and instead petitioned the Court to dismiss this case due to  
22 Plaintiff’s perception that an ongoing state court action about his delinquent child support  
23 would ultimately be resolved in his favor. (Dkt. No. 48.) He did not, however, specify  
24 whether he sought dismissal with or without prejudice and he did not appear at oral argument  
25 on Defendant’s motion to dismiss.

26 Following oral argument Defendant responded in writing to Plaintiff’s request for  
27 dismissal. Defendant contends that the superior court has retained jurisdiction over Plaintiff’s  
28 child support action and has stayed the child support enforcement action and released Henry’s

1 commercial driver license pending an August 10, 2012 hearing on Henry’s motion to vacate  
2 the child support order. (Dkt. No. 51.) Nonetheless, Defendant contends that the Court  
3 should grant Plaintiff’s request for dismissal or, in the alternative, dismiss this action in accord  
4 with Younger and Rooker-Feldman doctrines.

5 **DISCUSSION**

6 Federal Rule of Civil Procedure 41(a) provides that a plaintiff may dismiss an action  
7 without court order by filing “a notice of dismissal before the opposing party serves either an  
8 answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Here, no  
9 defendant has answered the complaint nor has any defendant moved for summary judgment;  
10 accordingly, Plaintiff has the right to dismiss his claims. While his request for dismissal is not  
11 technically a “notice of dismissal,” in light of Plaintiff’s status as a pro se litigant, the Court  
12 will construe the pleading as a Rule 41(a)(1) notice of dismissal.

13 Such a unilateral dismissal is without prejudice unless the notice provides otherwise.  
14 Fed. R. Civ. P. 41(a)(1)(B). As Plaintiff’s notice does not so indicate, the dismissal of his  
15 claims is without prejudice. See Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.  
16 1997).

17 **CONCLUSION**

18 Per Plaintiff’s unopposed request, this action is DISMISSED without prejudice  
19 pursuant to Federal Rule of Civil Procedure 41(a)(1). The Clerk shall terminate the case.

20  
21 **IT IS SO ORDERED.**

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23 Dated: May 31, 2012

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25 JACQUELINE SCOTT CORLEY  
26 UNITED STATES MAGISTRATE JUDGE  
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