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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN SHEK,

Plaintiff(s),

No. C 11-1968 PJH

v.

**ORDER OF DISMISSAL**

CHILDREN'S HOSPITAL & RESEARCH  
CENTER AT OAKLAND,

Defendant(s).

Before the court is defendant's motion to dismiss plaintiff's complaint, noticed for hearing on September 21, 2011. Plaintiff's responsive brief, to the extent it is comprehensible, reads like an opposition to the motion to dismiss, but is entitled "Plaintiff's motion to dismiss without prejudice, change of venue after failed attempt for requesting recusal of Judge Phyllis J. Hamilton for bias." In the body of the brief, plaintiff requests the court to dismiss the case without prejudice for change of venue. While it is not clear what plaintiff intends by the use of the words "for change of venue," the law is clear that plaintiff has a right to dismiss his own case without a court order before an answer or motion for summary judgment is filed pursuant to Fed. R. Civ. P. 41(a)(1). Accordingly, as neither an answer nor motion for summary judgment has been filed, and given that plaintiff could have simply filed a notice of voluntary dismissal, the court GRANTS plaintiff's request and DISMISSES this case without prejudice. The clerk shall close the file.

**IT IS SO ORDERED.**

Dated: September 9, 2011



PHYLLIS J. HAMILTON  
United States District Judge

**United States District Court**  
For the Northern District of California