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United States District Court  
For the Northern District of California

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

|                       |   |                        |
|-----------------------|---|------------------------|
| ALVIN A. AUGUSTINE,   | ) | No. C 09-01493 JW (PR) |
| Plaintiff,            | ) | ORDER OF DISMISSAL     |
| vs.                   | ) |                        |
| PLEASANT VALLEY STATE | ) |                        |
| PRISON, et al.,       | ) |                        |
| Defendants.           | ) |                        |

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Plaintiff filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983. On April 20, 2009, Plaintiff filed a letter with this Court indicating that he does not wish to proceed with the instant action. (Docket No. 4.)

A plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal “at any time before service by the adverse party of an answer or of a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice, but unless plaintiff’s notice of dismissal states otherwise, it is deemed to be “without prejudice.” See Fed. R. Civ. P. 41(a)(1); Humphreys v. United States, 272 F.2d 411, 412 (9th Cir. 1959). No court order is required. Plaintiff’s notice of dismissal is effective by itself to terminate the action: “[A]n action may be dismissed by the plaintiff without order of the court . . . by

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filing a notice of dismissal.” Fed. R. Civ. P. 41(a)(1); see also Hamilton v. Shearson- Lehman American Exp. Inc., 813 F.2d 1532, 1534-1536 (9th Cir. 1987) (Rule 41(a)(1)(i) does not require leave of court to dismiss the action).

Plaintiff’s letter, which the court construes as his “Notice of Dismissal,” was filed before service by the adverse party of an answer. Therefore, the Court finds that plaintiff has the absolute right to dismiss his action voluntarily. See Fed. R. Civ. P. 41(a)(1)(i). Based on plaintiff’s request for voluntary dismissal, this action is DISMISSED without prejudice. See id.

The clerk shall terminate all pending motions as moot.

DATED: May 13, 2009

  
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JAMES WARE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ALVIN A. AUGUSTINE,  
Plaintiff,

Case Number: CV09-01493 JW

**CERTIFICATE OF SERVICE**

v.

PLEASANT VALLEY STATE PRISON, et  
al.,

Defendants.  
\_\_\_\_\_ /

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 5/28/2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alvin A. Augustine K-02298  
Mule Creek State Prison  
4001 Highway 104  
P. O. Box 409099  
Ione, Ca 95640

Dated: 5/28/2009

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk