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

JOSE LUIS MORALES,

Plaintiff,

v.

MATHEW CATE, et al.,

Defendants.

No. C 11-05211 EJD (PR)

ORDER GRANTING MOTION FOR
VOLUNTARY DISMISSAL; CLOSING
CASE

(Docket No. 54.)

Plaintiff, a California inmate, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against Pelican Bay State Prison (“PBSP”) officials for unconstitutional acts. Plaintiff has filed a motion to voluntarily dismiss the matter, indicating that he is refileing the claims in a federal habeas action. (Docket No. 54.)

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 dispositive motion has been filed in this matter.

Accordingly, the motion is GRANTED.

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1 **CONCLUSION**

2 For the reasons set forth above, this case is DISMISSED without prejudice. The
3 Clerk shall file the attached federal habeas petition as a new habeas action, and send
4 Plaintiff the necessary filing fee notices.

5 The Clerk shall terminate any pending motions and close this action.

6 DATED: 8/3/2015

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8 EDWARD J. DAVILA
9 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSE LUIS MORALES,
Plaintiff,

Case Number: CV11-05211 EJD

CERTIFICATE OF SERVICE

v.

MATHEW CATE, 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 8/3/2015, 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.

Jose Luis Morales P 63392
California Substance Abuse Treatment Facility and State Pris
P. O. Box 5242
Corcoran, CA 93212

Dated: 8/3/2015

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