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

RICHARD J. CRANE,)	No. C 13-02937 EJD (PR)
Plaintiff,)	ORDER GRANTING MOTION FOR
v.)	VOLUNTARY DISMISSAL
M. S. EVANS, et. al.,)	
Defendants.)	
<hr style="width: 350px; margin-left: 0;"/>)	(Docket No. 20)

Plaintiff, a state prisoner at Corcoran State Prison, filed a civil rights complaint in pro se pursuant to 42 U.S.C. § 1983. (Docket No. 7.) On November 13, 2013, the Court dismissed Plaintiff’s complaint with leave to amend. (Docket No. 15.) Thereafter, Plaintiff was granted two extensions of time to file an amended complaint. (Docket Nos. 17 and 19.) Plaintiff has filed a motion for voluntary dismissal without prejudice and relief from default. (Docket No. 20.)

A plaintiff has the absolute right to dismiss his 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

1 411, 412 (9th Cir. 1959). Here, the Court dismissed Plaintiff's complaint and an amended
2 complaint was due at the time of Plaintiff's filing the motion for voluntary dismissal.
3 Plaintiff failed to file an amended complaint and therefore no opposing party had been
4 served. By filing a motion for voluntary dismissal, Plaintiff seeks to notify the Court of
5 his desire to no longer prosecute this action. Therefore Plaintiff's motion for voluntary
6 dismissal is **GRANTED** without prejudice.¹ Accordingly, this action is DISMISSED.
7 The Clerk of the Court shall terminate all pending motions and deadlines and close the
8 file.

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10 DATED: 3/26/2014


EDWARD J. DAVILA
United States District Judge

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27 ¹ Plaintiff also seeks relief from default pursuant to Fed. R. Civ. P. 55(c). (Docket No.
28 20.) His request is unnecessary as no default judgement has been entered in these
proceedings.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RICHARD J. CRANE,
Plaintiff,

Case Number CV 13-02937 EJD (PR)

v.

CERTIFICATE OF SERVICE

M.S. EVANS, Warden, 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 3/26/2014, 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) inter-office delivery receptacle located in the Clerk's office.

Richard J. Crane
C-44519
State Prison Corcoran
P. O. Box 5242
Corcoran, CA 93212

DATED: 3/26/2014

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