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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BILLY WAYNE MILLER,  
  
Plaintiff,  
  
vs.  
  
OCEANSIDE POLICE DEPARTMENT and  
DRUG ENFORCEMENT AGENCY,  
  
Defendants.

CASE NO. 09 CV 2265 JM (BLM)  
  
**ORDER GRANTING MOTION TO  
VOLUNTARILY DISMISS  
DEFENDANT DRUG  
ENFORCEMENT AGENCY;  
DENYING MOTION TO DISMISS  
AS MOOT**  
  
Doc. Nos. 31, 37


Pending before the court is Plaintiff’s “Motion to Dismiss Plaintiff’s Complaint to Set Aside Forfeiture.” (Doc. No. 37). The court construes this as a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a). A plaintiff “may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A). As Defendant Drug Enforcement Agency has filed neither an answer nor a motion for summary judgment, Plaintiff may dismiss the action without prejudice against them as a matter of course. *See* Fed. R. Civ. P. 41(a)(1)(B).

1           The court hereby orders that Defendant Drug Enforcement Agency be DISMISSED from the  
2 action. Accordingly, Defendant Drug Enforcement Agency's motion to dismiss (Doc. No. 31) is  
3 DENIED as moot.

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**IT IS SO ORDERED.**

DATED: December 9, 2009

  
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Hon. Jeffrey T. Miller  
United States District Judge