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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROBERT THOMAS CAVALIER,
12 CDCR #E-98747,

13 Plaintiff,

14 vs.

15 MARCUS POLLARD;
16 BPH COMMISSIONER GROUNDS;
17 GOV. GAVIN NEWSOM,

18 Defendants.

Case No.: 3:20-cv-01379-DMS-AHG

**ORDER GRANTING MOTION
TO WITHDRAW AND DISMISS
CIVIL ACTION PURSUANT TO
Fed. R. Civ. P. 41(a) AND DENYING
MOTION TO PROCEED IN FORMA
PAUPERIS AS MOOT**

[ECF Nos. 2, 6]

19 On July 17, 2020, Plaintiff Robert Thomas Cavalier, proceeding pro se and while
20 incarcerated at Richard J. Donovan Correctional Facility in San Diego, California, filed
21 this civil rights action pursuant to 42 U.S.C. § 1983 (“Compl.,” ECF No. 1), together with
22 a Motion to Proceed In Forma Pauperis (“IFP”) (ECF No. 2). On August 20, 2020, he filed
23 a “Motion to Withdraw and Dismiss ‘*Cavalier v. Pollard*’” (ECF No. 6).

24 **I. Procedural Background**

25 Three days after he filed this case, on July 21, 2020, Plaintiff filed a separate
26 Complaint and Motion to Proceed IFP in *Thomas v. Newsom, et al.*, S.D. Cal. Civil Case
27 No. 3:20-cv-01398-MMA-KSC (“*Newsom I*”), naming most of the same Defendants, and
28 alleging what appeared to be the same claims. *See Bias v. Moynihan*, 508 F.3d 1212, 1255

1 (9th Cir. 2007) (permitting court to take ““notice of proceedings in other courts, both within
2 and without the federal judicial system, if those proceedings have a direct relation to
3 matters at issue.””) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.
4 2002)). Because the claims raised in *Newsom I* were deemed duplicative of those alleged
5 and still pending in this case, *Newsom I* was dismissed sua sponte pursuant to 28 U.S.C. §
6 1915A(b)(1) without prejudice to Plaintiff’s pursuit of those claims in this previously-filed
7 action. *See Newsom I*, S.D. Cal. Civil Case No. 3:20-cv-01398-MMA-KSC, ECF No. 4.

8 On August 20, 2020, Plaintiff filed yet another Complaint, *Cavalier v. Newsom, et*
9 *al.*, S.D. Cal. Civil Case No. 3:20-01615-MMA-DEB (“*Newsom II*”), together with another
10 Motion to Proceed IFP, and the same “Motion to Withdraw and Dismiss ‘*Cavalier v.*
11 *Pollard*’” he filed in this action. *See Newsom II*, S.D. Cal. Civil Case No. 3:20-01615-
12 MMA-DEB (ECF Nos. 1, 2, 3). Plaintiff’s Complaint in *Newsom II*, like his Complaints in
13 this case (“*Cavalier v. Pollard*”) and *Newsom I*, all allege substantially the same claims
14 against substantially the same parties.

15 **II. Motion to Withdraw and Dismiss “*Cavalier v. Pollard*”**

16 In Plaintiff’s Motion to Withdraw and Dismiss, he contends that his Complaint in
17 this case was incomplete at the time he filed it, and that his “2d Complaint” filed on July
18 21 (*Newsom I*) better “articulates what he is trying to explain.” *See* ECF No. 6 at 2–3.
19 Plaintiff acknowledges, however, that *Newsom I* has already been dismissed without
20 prejudice; therefore, he asks instead to withdraw *Cavalier v. Pollard*, and to proceed with
21 the new Complaint e-filed with his Motion (*Newsom II*). *See id.* at 4–5. As noted above,
22 *Newsom II* was filed by the Clerk of Court on August 20, 2020, and has been assigned Civil
23 Case No. 3:20-cv-01615-MMA-DEB. Plaintiff’s Complaint and a new Motion to Proceed
24 IFP in that case remain pending before Judge Anello. *See Newsom II*, S.D. Cal. Civil Case
25 No. 3:20-cv-01615-MMA-DEB (ECF Nos. 1, 2).

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1 The filing of a notice of voluntary dismissal with the court automatically terminates
2 the action as to the defendants who are the subjects of the notice. . . . Such a dismissal
3 leaves the parties as though no action had been brought.” *American Soccer Co., Inc. v.*
4 *Score First Enterprises*, 187 F.3d 1108, 1110 (9th Cir. 1999) (citing *Wilson v. City of San*
5 *Jose*, 111 F.3d 688, 692 (9th Cir. 1997) (citations and footnote omitted)). Thus, because
6 Plaintiff has notified the Court that he does not wish to pursue *Cavalier v. Pollard* at this
7 time, no party has yet to be served with any valid pleading, and no answer or motion for
8 summary judgment has yet to be filed, voluntary dismissal pursuant to Fed. R. Civ. P.
9 41(a)(1)(A)(i) is appropriate. *See Hamilton v. Shearson-Lehman Am. Exp., Inc.*, 813 F.2d
10 1532, 1534–35 (9th Cir. 1987) (“As the rule states, no action by the court is required for
11 dismissal by notice under Rule 41(a)(1)(i). A voluntary dismissal by a plaintiff under this
12 subsection automatically terminates the action upon the filing of the dismissal with the
13 clerk.”). “[T]he fact that [Plaintiff’s] filing was named as a ‘motion’ does not preclude its
14 operative effect as a notice of dismissal.” *Ramirez-Ramos v. Ryan*, No.
15 CV188086PCTNVWJFM, 2019 WL 885624, at *6 (D. Ariz. Jan. 18, 2019), *report and*
16 *recommendation adopted*, 2019 WL 859690 (D. Ariz. Feb. 22, 2019) (“Although the
17 document filed by [plaintiff] was denominated a Motion for Voluntary Dismissal rather
18 than a notice of dismissal as specified in Rule 41(a)(1), the Court finds this distinction to
19 be without legal significance since the effect desired by [plaintiff] in filing the document
20 with the Court was clearly to have his claims dismissed without prejudice.”); *see also* 9
21 Fed. Prac. & Proc. Civ. § 2363, Voluntary Dismissal—Dismissal as a Matter of Right (3d
22 ed.) (“It is merely a notice and not a motion, although a notice in the form of a motion is
23 sufficient.”).

24 **III. Conclusion and Order**

25 For the reasons explained, Plaintiff’s Motion to Withdraw and Dismiss *Cavalier v.*
26 *Pollard* (ECF No. 6), construed as a Notice of Voluntary Dismissal pursuant to Fed. R.
27 Civ. P. 41(a) is **GRANTED**. Plaintiff’s Motion to Proceed IFP (ECF No. 2) is **DENIED**
28 as moot, and this civil action is **DISMISSED** without prejudice to Plaintiff’s pursuit of the

1 claims as re-alleged and currently pending before Judge Anello in *Cavalier v. Newsom, et*
2 *al.*, S.D. Cal. Civil Case No. 3:20-cv-01615-MMA-DEB.

3 **IT IS SO ORDERED.**

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5 Dated: September 10, 2020

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7 Hon. Dana M. Sabraw
8 United States District Judge

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