

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

ANTHONY J. FAILS,  
Plaintiff,

Case No.: 3:10cv400/MCR/EMT

C. GREEN, WARDEN  
Defendant.

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**REPORT AND RECOMMENDATION**

This matter is before the court on Plaintiff's motion to dismiss the instant civil rights case, filed pursuant to 42 U.S.C. § 1983, without prejudice (Doc. 4).

Rule 41(a)(1)(A)(i) provides that an action may be dismissed without an order of the court by filing a notice of dismissal at any time before the adverse party serves an answer or files a motion for summary judgment. Because Defendant has not yet been served in the instant case, it is clear that Plaintiff is automatically entitled to a voluntary dismissal at this time.

Accordingly, it is respectfully **RECOMMENDED**:

That Plaintiff's motion to dismiss (Doc. 4) be **GRANTED** and this case be **DISMISSED without prejudice**.

At Pensacola, Florida, this 28<sup>th</sup> day of October 2010.

*/s/ Elizabeth M. Timothy*

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**ELIZABETH M. TIMOTHY**  
**UNITED STATES MAGISTRATE JUDGE**

## **NOTICE TO THE PARTIES**

**Objections to these proposed findings and recommendations may be filed within fourteen (14) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only. A copy of objections shall be served upon the magistrate judge and all other parties. Failure to object may limit the scope of appellate review of factual findings. *See* 28 U.S.C. § 636; United States v. Roberts, 858 F.2d 698, 701 (11th Cir. 1988).**