

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

RICHARD L. STEARNSMILLER,  
Plaintiff,

vs.

Case No.: 5:09cv215/RS/EMT

STATE OF FLORIDA, et al.,  
Defendants.

---

**REPORT AND RECOMMENDATION**

This matter is before the court on Plaintiff's "Alternative Plaintiff's [sic] Motion to Dismiss Action for Good Cause," which shall be construed as a notice of voluntary dismissal (Doc. 12). Also pending are Plaintiff's motion to proceed in forma pauperis (Doc. 10), motion to stay (Doc. 11), "Notice to Defendants of NDLR for Waiver of Service of Process" (Doc. 13), and "Motion for Order to Show Cause to Defendants Why Sanctions Should not be Ordered by Court" (Doc. 14).

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 Defendants have 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**:

1. That Plaintiff's "Alternative Plaintiff's [sic] Motion to Dismiss Action for Good Cause," construed as a notice of voluntary dismissal, (Doc. 12) be **GRANTED** and this case be **DISMISSED without prejudice**.
2. That all pending motions be **DENIED** as moot.

At Pensacola, Florida, this 12<sup>th</sup> day of August 2009.

/s/ Elizabeth M. Timothy

**ELIZABETH M. TIMOTHY**

**UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO THE PARTIES**

**Objections to these proposed findings and recommendations may be filed within ten (10) 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).**