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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA5
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6 JASON ALTHEIDE,

7 Plaintiff,

Case No. 3:22-cv-00143-ART-CLB

8 v.

ORDER

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CALVIN JOHNSON, *et al.*,

10 Defendants.

11 **I. DISCUSSION**

12 Plaintiff initiated this action on March 23, 2022, with a civil rights
13 complaint under 42 U.S.C. § 1983. (ECF No. 1-1.) On April 8, 2022, Plaintiff
14 filed a first amended complaint, and on April 29, 2022, Plaintiff filed a second
15 amended complaint. (ECF Nos. 3, 5.) Plaintiff has now filed a motion entitled
16 “motion to withdraw.” (ECF No. 6.) In the motion Plaintiff states simply “Altheide
17 withdraws complaint as State would better suit jurisdiction of authorities.” (*Id.*
18 at 1.) It appears that Plaintiff is stating that he wishes to pursue his claims in
19 Nevada State Court, rather than proceed in federal court. The Court construes
20 this document as a motion for voluntary dismissal.

21 Under Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an
22 action without a court order by filing “a notice of dismissal before the opposing
23 party serves either an answer or a motion for summary judgment.” Fed. R. Civ.
24 P. 41(a)(1)(A)(i). The complaint has not been served on the Defendants, and thus
25 the Defendants have not filed an answer or a motion for summary judgment.
26 Accordingly, the Court grants Plaintiff’s motion to voluntarily dismiss this action
27 without prejudice.

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1 If the Court has misunderstood Plaintiff's filing, Plaintiff may file a motion
2 for reconsideration within 30 days advising the Court that he did not intend to
3 file a motion for voluntary dismissal and requesting that this case be reopened.

4 **II. CONCLUSION**

5 For the foregoing reasons, it is ordered that the Court construes ECF No.
6 as a motion for voluntary dismissal, and the Court grants the motion.

7 It is further ordered that if Plaintiff did not intend to file a motion for
8 voluntary dismissal, he may file a motion for reconsideration within 30 days
9 requesting that this case be reopened.

10 It is further ordered that Plaintiff's application to proceed *in forma pauperis*
11 (ECF No. 1) is denied as moot.

12 It is further ordered that this action is dismissed in its entirety without
13 prejudice.

14 It is further ordered that the Clerk of the Court will enter judgment
15 accordingly.

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17 DATED THIS 10th day of May 2022.

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20 _____
21 United States District Court
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