

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Frankie Weisner v. Jeffrey Macomber, et al.

No. 1:25-cv-00919-EPG (PC), United States District Court for the Eastern District of California (September 11, 2025)

SUMMARY

The United States District Court for the Eastern District of California construed Plaintiff Frankie Weisner’s filing as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A) (i). Because no defendant had served an answer or motion for summary judgment, the court dismissed the action without prejudice and directed the Clerk to close the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 11, 2025
DOCKET	1:25-cv-00919-EPG (PC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a notice seeking voluntary dismissal of his § 1983 action before any defendant served an answer or motion for summary judgment.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Frankie Weisner v. Jeffrey Macomber, et al.

TOPICS

civil procedure section 1983

PRACTICE AREAS

Civil procedure Civil rights litigation Prisoner civil rights

QUESTIONS PRESENTED

- Whether Plaintiff's filing should be construed as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

2. Whether the action should be dismissed without prejudice and terminated.

HOLDINGS

1. A plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal before the opposing party serves an answer or motion for summary judgment; Plaintiff's filing was properly construed as such a notice.
2. The action was dismissed without prejudice and terminated upon Plaintiff's voluntary dismissal.

KEY QUOTATIONS

“The Court construes these filings as a notice of voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i), which permits a Plaintiff to 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.”” (at 1)

FACTUAL BACKGROUND

Plaintiff Frankie Weisner is incarcerated and brought this action under 42 U.S.C. § 1983 while proceeding pro se and in forma pauperis. On September 8, 2025, he filed a notice stating that he voluntarily sought dismissal of the First Amended Complaint. No defendant had served an answer or motion for summary judgment.

PROCEDURAL HISTORY

Frankie Weisner, an incarcerated plaintiff proceeding pro se and in forma pauperis, filed this § 1983 action. He later filed a notice stating his intention to voluntarily dismiss the First Amended Complaint. The court construed the filing as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i), terminated the action without prejudice, and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)

OPINION

Macomber

PER CURIAM.

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6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8 9 FRANKIE WEISNER, Case No. 1:25-cv-00919-EPG (PC) 10 Plaintiff,

11 v. ORDER REGARDING NOTICE OF

VOLUNTARY DISMISSAL WITHOUT

12 JEFFREY MACOMBER , et al., PREJUDICE

13 Defendants. (ECF No. 18) 14 15 Plaintiff Frankie Weisner is incarcerated and proceeds pro se
and in forma pauperis in this 16 action brought under 42 U.S.C. § 1983. (ECF No. 1). 17 On
September 8, 2025, Plaintiff Frankie Weisner filed a “Notice of Motion and Voluntary 18
Dismissal of Etc” which states “Plaintiff(s) Frankie Weisner et. al. hereby move the Court for an
19 Order to Dismiss the First Amended Complaint, voluntarily.” (ECF No. 18). 20 The Court
construes these filings as a notice of voluntary dismissal without prejudice 21 under Federal Rule
of Civil Procedure 41(a)(1)(A)(i), which permits a Plaintiff to dismiss an 22 action without a court
order by filing “a notice of dismissal before the opposing party serves 23 either an answer or a
motion for summary judgment.” Notably, Plaintiff states his intention to 24 voluntarily dismiss
this case without prejudice and no Defendant has served an answer or motion 25 for summary
judgment. 26 Accordingly, in light of the voluntary dismissal, this action has been terminated, Fed.
R. 27 Civ. P. 41(a)(1)(A)(i), and has been dismissed without prejudice. See Wilson v. City of San
Jose, 111 F.3d 688, 692 (9th Cir. 1997). 28 1 The Clerk of Court is respectfully directed to
terminate any pending dates and deadlines 2 | and to close the case. 3 4 IT IS SO ORDERED. |
Dated: _ September 10, 2025 [see hey

6 UNITED STATES MAGISTRATE JUDGE

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