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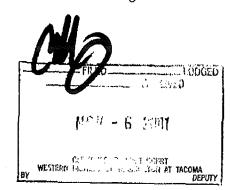
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## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

JERRY W. KOHL,

Plaintiff,

v.

MICHAEL E. SCHWARTZ,

Defendant.

Case No. C01-5510FDB

ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL

The Court referred this civil rights action to Magistrate Judge J. Kelley Arnold. Pursuant to the Order of Reference, Judge Arnold first granted Plaintiff leave to proceed *in forma pauperis*, and then shortly afterwards issued a Report recommending that Plaintiff's complaint be dismissed as frivolous and that the action should count as a strike under 28 U.S.C. § 1915(g). Plaintiff has responded to the Report by moving for a voluntary dismissal under Fed. R. Civ. P. 41.

The Court agrees with Judge Arnold that Plaintiff's complaint is frivolous. The only issue is whether Plaintiff should be allowed to avoid a strike under 28 U.S.C. § 1915(g) by taking a voluntary dismissal. Fed. R. Civ. P. 41(a) provides that "an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." Defendant in this

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