

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GILBERT F. COLON,
Plaintiff,
v.

1:07-cv-00932-AWI-GSA-PC

ORDER GRANTING PLAINTIFF'S MOTION
TO DISMISS DEFENDANT GREENOUGH
(Doc. 62.)

DR. ST. CLAIR, et al.,
Defendants.

ORDER DISMISSING DEFENDANT DR.
WILLIAM GREENOUGH FROM THIS
ACTION

I. BACKGROUND

Plaintiff Gilbert F. Colon ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on June 28, 2007. (Doc. 1.) This action now proceeds on Plaintiff's Amended Complaint filed on June 5, 2008, against defendants Sydenstricker, Greenough,¹ Peterson, Thomatos, and Witwer, for inadequate medical care in violation of the Eighth Amendment.² (Doc. 13.) On April 8, 2010, Plaintiff filed a motion to dismiss defendant Greenough from this action. (Doc. 62.) On December 22, 2010, the Court ordered defendants Sydenstricker, Thomatos, Witwer, and Peterson to respond to Plaintiff's motion. (Doc. 63.) On

¹Plaintiff named Defendant Dr. Greenbough in the complaint. (Doc. 13.) The California Department of Corrections and Rehabilitation refers to this defendant as Dr. William Greenough. (Doc. 41 at 3.) The Court uses the spelling Greenough herein to identify this defendant.

²All other claims and defendants were dismissed from this action by the Court on May 27, 2009. (Doc. 16.)

January 20, 2011, defendants Sydenstricker, Thomatos, Witwer, and Peterson filed written notice of their consent to the dismissal of defendant Greenough. (Doc. 64.)

II. RULE 41

Under Rule 41 of the Federal Rules of Civil Procedure, "the plaintiff may 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; or a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In this case, defendant Thomatos filed an Answer on November 18, 2009; defendants Sydenstricker and Witwer filed an Answer on June 1, 2010; and defendant Peterson filed an Answer on October 25, 2010. (Docs. 25, 42, 51.) No other parties have appeared in this action. Therefore, before Plaintiff can dismiss defendant Greenough, defendants Sydenstricker, Thomatos, Witwer, and Peterson must stipulate to the dismissal.

On January 20, 2011, defendants Sydenstricker, Thomatos, Witwer, and Peterson consented in writing to the dismissal of defendant Greenough. In light of this consent, Plaintiff's motion to dismiss defendant Greenough shall be granted.

III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to dismiss defendant Greenough from this action, filed on December 16, 2010, is GRANTED;
2. Defendant Dr. William Greenough is DISMISSED from this action; and
3. The Clerk is DIRECTED to reflect the dismissal of defendant Greenough from this action on the Court's docket.

IT IS SO ORDERED.

Dated: February 9, 2011


CHIEF UNITED STATES DISTRICT JUDGE