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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VALENTINE E. UNDERWOOD,

1:08-cv-00986-GSA-PC

Plaintiff,

ORDER GRANTING PLAINTIFF’S
MOTION TO DISMISS
(Doc. 100.)

v.

M. KNOWLES, et al.,

ORDER DISMISSING DEFENDANT
LANTZ FROM THIS ACTION PURSUANT
TO RULE 41

Defendants.
_____ /

I. BACKGROUND

Plaintiff Valentine E. Underwood (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 17, 2008. (Doc. 1.) This action now proceeds on the original Complaint, against defendants Northcutt and Martin for retaliation, in violation of the First Amendment; and against defendants Northcutt, Martin, Caviness, Lantz, Trujillo, Truitt, and Fambrough ("Defendants") for use of excessive force physical force, in violation of the Eighth Amendment.¹ The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and on June 15, 2011, this case was reassigned to the undersigned for all further proceedings. (Docs. 4, 97, 102.)

On December 7, 2010, Defendants filed a Statement of Fact of Death suggesting the death of defendant Seth Lantz. (Doc. 72.) On June 10, 2011, Plaintiff filed a motion to dismiss defendant Seth Lantz from this action. (Doc. 100.) On July 14, 2011, defendants Northcutt, Martin, Caviness,

¹All other claims and defendants were dismissed by the Court on October 21, 2009, based on Plaintiff’s failure to state a claim. (Doc. 31.)

1 Trujillo, Truitt, and Fambrough filed a notice of their consent to the dismissal of defendant Seth
2 Lantz. (Doc. 106.)

3 **II. MOTION TO DISMISS UNDER RULE 41**

4 Plaintiff requests that defendant Lantz be dismissed from this action in light of Defendants'
5 statement suggesting defendant Lantz's death. Plaintiff asserts that he does not wish to file a motion
6 under Rule 25 to substitute defendant Lantz's successors in place of defendant Lantz in this action.
7 (Doc. 100.) Under Rule 41 of the Federal Rules of Civil Procedure, "the plaintiff may dismiss an
8 action [against a defendant] without a court order by filing a notice of dismissal before the opposing
9 party serves either an answer or a motion for summary judgment; or a stipulation of dismissal signed
10 by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In this case, defendants Fambrough,
11 Lantz, Northcutt, Truit, and Trujillo filed an answer to the complaint on March 17, 2010, and
12 defendants Martin and Caviness filed an answer to the complaint on April 8, 2011. (Docs. 40, 90.)
13 Plaintiff's motion and the written consent of defendants Northcutt, Martin, Caviness, Trujillo, Truitt,
14 and Fambrough act as a stipulation of dismissal signed by all parties who have appeared. Therefore,
15 Plaintiff's motion to dismiss shall be granted, and defendant Seth Lantz shall be dismissed from this
16 action under Rule 41.

17 **III. CONCLUSION**

18 Based on the foregoing, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion to dismiss, filed on June 10, 2011, is GRANTED;
- 20 2. Defendant Seth Lantz is DISMISSED from this action under Rule 41; and
- 21 3. The Clerk is DIRECTED to reflect the dismissal of defendant Lantz from this action
22 on the court's docket.

23
24 IT IS SO ORDERED.

25 **Dated: July 15, 2011**

25 **/s/ Gary S. Austin**
26 UNITED STATES MAGISTRATE JUDGE