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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERIC WILTON BURTON,

1:09-cv-01360-GSA-PC

Plaintiff,

ORDER GRANTING MOTION TO DISMISS
PURSUANT TO RULE 41
(Doc. 13.)

v.

KEN CLARK, et al.,

ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE

Defendants.

ORDER DIRECTING CLERK TO CLOSE FILE

_____/

Plaintiff Eric Wilton Burton (“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 on August 4, 2009. (Doc. 1.) On August 14, 2009, plaintiff consented to the jurisdiction of a Magistrate Judge to conduct all further proceedings in this case, including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c). (Doc. 4.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

On May 27, 2010, plaintiff filed a motion to voluntarily dismiss the complaint. (Doc. 13.) In Wilson v. City of San Jose, the Ninth Circuit explained:

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing

1 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
2 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
3 dismissal prior to the defendant's service of an answer or motion for summary
4 judgment. The dismissal is effective on filing and no court order is required. Id.
5 The plaintiff may dismiss some or all of the defendants, or some or all of his
6 claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-
7 10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court
8 automatically terminates the action as to the defendants who are the subjects of
9 the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is
10 ordinarily without prejudice to the plaintiff's right to commence another action for
11 the same cause against the same defendants. Id. (citing McKenzie v. Davenport-
12 Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal
13 leaves the parties as though no action had been brought. Id.

8 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No defendant has filed an answer
9 or motion for summary judgment in this action. Therefore, plaintiff's motion shall be granted.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's motion to dismiss the complaint is GRANTED;
- 12 2. This action is DISMISSED in its entirety without prejudice; and
- 13 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the
14 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

15
16 IT IS SO ORDERED.

17 **Dated: June 1, 2010**

17 /s/ Gary S. Austin
18 UNITED STATES MAGISTRATE JUDGE