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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,

1:09-cv-01406-OWW-GSA-PC

Plaintiff,

ORDER GRANTING REQUEST FOR
VOLUNTARY DISMISSAL PURSUANT TO
RULE 41
(Doc. 23.)

v.

JAMES TILTON, et al.,

ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE

Defendants.

ORDER DIRECTING CLERK TO CLOSE FILE

_____ /

Plaintiff Kevin E. Fields (“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 3, 2009. (Doc. 1.) On February 11, 2010, the Court dismissed the complaint for failure to state a claim, with leave to amend. (Doc. 16.) On March 16, 2010, Plaintiff filed an amended complaint. (Doc. 19.) On April 19, 2011, the Court entered findings and recommendations, recommending that this action proceed with the amended complaint, on the claims found cognizable by the Court. (Doc. 20.) The case now proceeds on Plaintiff’s amended complaint filed November 23, 2009. (Doc. 28.) On February 12, 2010, the court dismissed the amended complaint for failure to comply with Rule 8(a), with leave to amend. (Doc. 29.) On May 5, 2011, the Court granted Plaintiff an extension of time in which to file objections to the findings and recommendations. (Doc. 22.) On May 31, 2011, Plaintiff filed a notice of voluntary dismissal of this action. (Doc. 23.)

1 In Wilson v. City of San Jose, the Ninth Circuit explained:

2 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss
3 his action prior to service by the defendant of an answer or a motion for summary
4 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
5 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
6 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
7 dismissal prior to the defendant's service of an answer or motion for summary
8 judgment. The dismissal is effective on filing and no court order is required. Id.
9 The plaintiff may dismiss some or all of the defendants, or some or all of his
10 claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-
11 10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court
12 automatically terminates the action as to the defendants who are the subjects of
13 the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is
14 ordinarily without prejudice to the plaintiff's right to commence another action for
15 the same cause against the same defendants. Id. (citing McKenzie v. Davenport-
16 Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal
17 leaves the parties as though no action had been brought. Id.

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

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's request for voluntary dismissal of this action under Rule 41 is
23 GRANTED;
- 24 2. This action is DISMISSED in its entirety without prejudice; and
- 25 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the
26 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

27 IT IS SO ORDERED.

28 **Dated: June 6, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE