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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

R. TOTH,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

1:09-cv-01432-GSA-PC

ORDER GRANTING MOTION TO DISMISS
PURSUANT TO RULE 41
(Doc. 23.)

ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE

ORDER DIRECTING CLERK TO CLOSE FILE

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R. Toth ("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 14, 2009. (Doc. 1.) On August 26, 2009, Plaintiff consented to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (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 November 15, 2010, Plaintiff filed a motion to voluntarily dismiss this lawsuit. (Doc. 23.)

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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 motion shall be granted.

20 Accordingly, IT IS HEREBY ORDERED that:

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

25 IT IS SO ORDERED.

26 Dated: November 17, 2010

27 /s/ Gary S. Austin
28 UNITED STATES MAGISTRATE JUDGE