

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 PUNAOFO TSUGITO TILEI,

10 Plaintiff,

11 v.

12 McGUINNESS, et al.,

13 Defendants.
14

Case No. 1:10-cv-00069-LJO-SKO (PC)

**ORDER DISMISSING DEFENDANT H.
HASRDSRI WITHOUT PREJUDICE
FED RULE CIV P 41(a)(1)(A)(i)**

(Doc. 64)

15
16 Plaintiff, Punafo Tsugito Tilei, a state prisoner proceeding *in forma pauperis*, filed this
17 civil rights action pursuant to 42 U.S.C. § 1983. On February 21, 2017, Plaintiff filed a notice of
18 dismissal of Defendant H. Hasrdsri without prejudice pursuant to Federal Rule of Civil Procedure
19 41(a)(1)(A)(i). (Doc. 64.)

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

21 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his
22 action prior to service by the defendant of an answer or a motion for summary
23 judgment. *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
24 *Hamilton v. Shearson-Lehman American Express*, 813 F.2d 1532, 1534 (9th
25 Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a
26 notice of dismissal prior to the defendant's service of an answer or motion for
27 summary judgment. The dismissal is effective on filing and no court order is
28 required. *Id.* The plaintiff may dismiss some or all of the defendants, or some
or all of his claims, through a Rule 41(a)(1) notice. *Id.*; *Pedrina v. Chun*, 987
F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal
with the court automatically terminates the action as to the defendants who are
the subjects of the notice. *Concha*, 62 F.2d at 1506. Unless otherwise stated,
the dismissal is ordinarily without prejudice to the plaintiff's right to
commence another action for the same cause against the same defendants. *Id.*

1 (citing *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934-35
2 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had
3 been brought. *Id.*

4 *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).

5 Defendant H. Hasrdsri has filed neither an answer, nor a motion for summary judgment in
6 this action. Plaintiff has not filed a proof of service of this action on Defendant H. Hasrdsri, and
7 represents that his efforts to do so have been unsuccessful. Because Plaintiff has exercised his
8 right under Rule 41(a)(1)(A)(i), Defendant H. Hasrdsri and all claims against him have been
9 terminated from this action. *See Wilson*, 111 F.3d at 692.

10 Therefore, IT IS HEREBY ORDERED that Defendant H. Hasrdsri and all claims against
11 him are dismissed without prejudice and the Clerk is ordered to terminate Defendant H. Hasrdsri
12 from the docket of this case in light of Plaintiff's Rule 41(a)(1)(A)(i) notice of dismissal.

13 IT IS SO ORDERED.

14 Dated: April 4, 2017

/s/ Lawrence J. O'Neill
15 UNITED STATES CHIEF DISTRICT JUDGE