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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER SIMMONS,

Plaintiff,

vs.

CDCR, et al.,

Defendants.

1:10-cv-00553-AWI-GSA-PC

ORDER DISMISSING DEFENDANT KVSP  
FROM THIS ACTION, WITHOUT  
PREJUDICE PURSUANT TO RULE 41  
AND PLAINTIFF'S NOTICE

Christopher Simmons ("Plaintiff") is a state prisoner proceeding with counsel in this civil rights action filed pursuant to Title V of the Americans with Disabilities Act of 1990 (ADA), California's Disabled Person Act (CDPA), and the Unruh Civil Rights Act (Unruh Act). This action was initiated by civil complaint filed by Plaintiff, proceeding pro se, in the Kern County Superior Court on December 17, 2009 (Case #S-1500-CV-269232, DRL). On March 29, 2010, defendant California Department of Corrections and Rehabilitation (CDCR) ("Defendant") removed the case to federal court by filing a Notice of Removal of Action pursuant to 28 U.S.C. § 1441(a)(1). (Doc. 1.)

This case now proceeds with the Second Amended Complaint, filed by Plaintiff on July 21, 2014, against defendants CDCR, Anthony Hedgpeth, Robert Keldgord, Kern Valley State Prison (KVSP), Jonathan Akanno, D. Campas, and J. Covarrubias, for retaliating against Plaintiff for the exercise of his civil rights pursuant to the ADA. (Doc. 33.)

1 On December 12, 2014, Plaintiff filed a Notice of Voluntary Dismissal of defendant  
2 KVSP from this action. (Id.) The court construes Plaintiff's notice as a motion to dismiss  
3 under Rule 41(a)(1). In Wilson v. City of San Jose, the Ninth Circuit explained:

4 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily  
5 dismiss his action prior to service by the defendant of an answer or a motion for  
6 summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995)  
7 (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534  
8 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files  
9 a notice of dismissal prior to the defendant's service of an answer or motion for  
10 summary judgment. The dismissal is effective on filing and no court order is  
11 required. Id. The plaintiff may dismiss some or all of the defendants, or some  
12 or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987  
13 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal  
14 with the court automatically terminates the action as to the defendants who are  
15 the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated,  
16 the dismissal is ordinarily without prejudice to the plaintiff's right to commence  
17 another action for the same cause against the same defendants. Id. (citing  
18 McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir.  
19 1987)). Such a dismissal leaves the parties as though no action had been  
20 brought. Id.

21 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No defendant has filed an  
22 answer or motion for summary judgment in this action. Therefore, KVSP is no longer a part of  
23 this action.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Defendant KVSP only is DISMISSED from this action, without prejudice; and
- 26 2. The Clerk of the Court is DIRECTED to reflect the voluntary dismissal of  
27 defendant KVSP pursuant to Rule 41(a) on the court's docket for this action.

28 IT IS SO ORDERED.

Dated: December 16, 2014

  
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SENIOR DISTRICT JUDGE