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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DURRELL ANTHONY PUCKETT,

12 Plaintiff,

13 vs.

14 CCI TEHACHAPI, et al.,

15 Defendants.  
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1:10-cv-02160-LJO-GSA-PC

ORDER FOR DEFENDANT MCBRIDE TO  
RESPOND TO PLAINTIFF'S NOTICE OF  
VOLUNTARY DISMISSAL WITHIN  
TWENTY (20) DAYS  
(Doc. 28.)

19 Durrell Anthony Puckett ("Plaintiff") is a state prisoner proceeding pro se with this civil  
20 rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on the First Amended  
21 Complaint filed on May 9, 2013, against defendants T. Eilers, J. F. Munoz, and Gene Dozer for  
22 use of excessive force, against defendants R. Williams, H. Carmona, J. F. Munoz, and M.  
23 Webster for failure to protect Plaintiff, against defendant T. Eilers for subjecting Plaintiff to  
24 adverse conditions of confinement, and against defendants M. Webster, T. Eilers, Gene Doser,  
25 H. Carmona, and Erin K. McBride for retaliation. (Doc. 9.)

26 On January 26, 2015, Plaintiff filed a notice of voluntary dismissal of defendant  
27 McBride from this action, with prejudice, pursuant to Rule 41(a) of the Federal Rules of Civil  
28 Procedure. (Doc. 28.)

1 In Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997), the Ninth Circuit  
2 explained:

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

20 In this case, defendant McBride filed and served an Answer to the complaint on August  
21 4, 2014. (Doc. 21.) Therefore, before Plaintiff can dismiss the case against defendant McBride  
22 under Rule 41(a), defendant McBride must consent in writing to the dismissal. Therefore,  
23 defendant McBride shall be required to respond in writing to Plaintiff's notice.

24 Accordingly, **IT IS HEREBY ORDERED** that within twenty (20) days of the date of  
25 service of this order, defendant McBride shall respond in writing to Plaintiff's notice of  
26 voluntary dismissal filed on January 26, 2015, indicating whether she consents to the dismissal  
27 of the claims against her in this action, with prejudice, or whether she has any reason to oppose  
28 the dismissal.

IT IS SO ORDERED.

Dated: January 28, 2015

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE