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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WALTER SHANE LANGSTON,)	1:11-cv-01073-GSA-PC
Plaintiff,)	ORDER GRANTING MOTION TO
vs.)	DISMISS PURSUANT TO RULE 41
C/O COLE, et al.,)	(Doc. 17.)
Defendants.)	ORDER DISMISSING ACTION IN ITS
)	ENTIRETY WITHOUT PREJUDICE
)	ORDER DIRECTING CLERK TO
)	CLOSE FILE

Walter Shane Langston (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint on June 20, 2011. (Doc. 1.) On June 27, 2011 and July 21, 2011, Plaintiff consented to the jurisdiction of a Magistrate Judge, and no other parties have appeared. (Docs. 4, 9.) 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 May 10, 2013, the court dismissed the complaint for failure for failure to state a claim, with leave to amend. (Doc. 16.) On June 5, 2013, Plaintiff filed a motion to dismiss this action, without prejudice, pursuant to Fed. R. Civ. P. 41(a). (Doc. 17.)

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

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant's service of an answer or motion for summary judgment. The dismissal is effective on filing and no court order is 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. (citing McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had been brought. Id.

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

Accordingly, IT IS HEREBY ORDERED that:

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

IT IS SO ORDERED.

Dated: June 10, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE