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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,
Plaintiff,
vs.
RON DAVIS, et al.,
Defendants.

1:12-cv-00384-GSA-PC
ORDER GRANTING MOTION TO
DISMISS PURSUANT TO RULE 41
(Doc. 16.)
ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE
ORDER DIRECTING CLERK TO CLOSE
FILE

Kevin E. Fields ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on March 14, 2012. (Doc. 1.)

On March 22, 2012, Plaintiff consented to Magistrate Judge jurisdiction in this action 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 September 10, 2014, Plaintiff filed a motion to dismiss this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. (Doc. 16.)

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

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

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. Plaintiff's motion to dismiss the complaint, filed on September 10, 2014, is
24 GRANTED;
- 25 2. This action is DISMISSED in its entirety without prejudice; and
- 26 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the
27 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

28 IT IS SO ORDERED.

Dated: September 13, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE