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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

HORACE CHESTER BROWN,

Plaintiff,

v.

**FRESNO UNIFIED SCHOOL
DISTRICT EDUCATIONAL
FACILITIES CORPORATION,**

Defendant.

) **1:12-CV-1597 AWI SMS**
)
) **ORDER CLOSING CASE IN**
) **LIGHT OF PLAINTIFF'S**
) **RULE 41(a) NOTICE OF**
) **DISMISSAL**
)
) (Doc. Nos. 13, 14)
)
)
)

On March 22, 2013, Plaintiff filed a notice of voluntary dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).¹

Rule 41(a)(1), in relevant part, reads:

(A) . . . the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. . . . (B) Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

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

¹The original complaint listed Sheila Brown as a plaintiff. However, the second amended complaint does not include Sheila Brown as a plaintiff. Because the amended complaint dropped Sheila Brown as a party in this case, the only plaintiff is Horace Brown. See Wynn v. Dallas Hous. Auth., 409 Fed. Appx. 744, 746 (5th Cir. Jan. 27, 2011).

1 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his
2 action prior to service by the defendant of an answer or a motion for summary
3 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
4 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
5 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
6 dismissal prior to the defendant's service of an answer or motion for summary
7 judgment. The dismissal is effective on filing and no court order is required. Id. .
8 . . The filing of a notice of voluntary dismissal with the court automatically
9 terminates the action as to the defendants who are the subjects of the notice.
10 Concha, 62 F.2d at 1506.

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

12 No answers to Plaintiff's complaint and no motions for summary judgment have been
13 filed in this case and it appears that no such answers or summary judgment motions have been
14 served. Because Plaintiff has exercised his right to voluntarily dismiss his complaint under Rule
15 41(a)(1), this case has terminated. See Wilson, 111 F.3d at 692.

16 Therefore, IT IS HEREBY ORDERED that:

- 17 1. The Clerk is ordered to close this case in light of Plaintiff's Rule 41(a)(1)(i) requested
18 dismissal without prejudice; and
- 19 2. The March 6, 2013, Findings and Recommendations (Doc. No. 13) are now moot.

20 IT IS SO ORDERED.

21 Dated: April 1, 2013



22 SENIOR DISTRICT JUDGE