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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DARRELL HARRIS,

Plaintiff,

vs.

CONNIE GIPSON, et al.,

Defendants.

1:12-cv-01753-LJO-GSA-PC

ORDER GRANTING MOTION TO  
DISMISS PURSUANT TO RULE 41  
(Doc. 19.)

ORDER DISMISSING ACTION IN ITS  
ENTIRETY WITHOUT PREJUDICE

ORDER DIRECTING CLERK TO CLOSE  
FILE

Darrell Harris ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on October 29, 2012. (Doc. 1.)

On April 3, 2015, Plaintiff filed a notice of voluntary dismissal under Rule 41(a). 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

1 with the court automatically terminates the action as to the defendants who are  
2 the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated,  
3 the dismissal is ordinarily without prejudice to the plaintiff's right to commence  
4 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.

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

8 Accordingly, IT IS HEREBY ORDERED that:

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

13  
14 IT IS SO ORDERED.

15 Dated: April 6, 2015

/s/ Lawrence J. O'Neill  
16 UNITED STATES DISTRICT JUDGE