

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CURTIS RENEE JACKSON,
Plaintiff,
vs.
UNKNOWN,
Defendants.

1:13-cv-00943-AWI-GSA-PC
ORDER GRANTING MOTION TO
DISMISS PURSUANT TO RULE 41
(Doc. 9; also resolves Doc. 8.)
ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE
ORDER DIRECTING CLERK TO:
(1) CLOSE FILE, AND
(2) SEND A COPY OF THIS ORDER
AND A COPY OF PLAINTIFF'S
LETTER OF JUNE 3, 2013 TO
SENIOR DISTRICT JUDGE
THELTON E. HENDERSON
(Doc. 1.)

I. BACKGROUND

Curtis Renee Jackson ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This case was filed on June 14, 2013, in the United States District Court for the Northern District of California. (Doc. 1.) On June 19, 2013, the case was transferred to the Eastern District of California. (Doc. 5.)

On June 28, 2013, Plaintiff filed a motion to dismiss this action. (Doc. 9.)

1 **II. MOTION TO DISMISS – FED. R. CIV. P. 41(a)(1)**

2 **A. Legal Standard**

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

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

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

22 **B. Plaintiff's Motion**

23 Plaintiff asserts that on June 3, 2013, he wrote a letter, with supporting documents
24 enclosed, specifically addressed to the Honorable Thelton Henderson, who is part of the three-
25 judge panel monitoring medical care provided by the California Department of Corrections and
26 Rehabilitation. Plaintiff asserts that he never intended the letter to be filed as a civil rights
27 complaint, and that he wrote the letter to inform Judge Henderson about the medical treatment
28 Plaintiff received when blood was discovered in his urine. Plaintiff requests the court to
dismiss this action and forward the filings from this action to the Honorable Thelton
Henderson, as Plaintiff intended.

No defendant has filed an answer or motion for summary judgment in this action.
Therefore, Plaintiff's motion shall be granted.

III. CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to dismiss the complaint is GRANTED;
2. This action is DISMISSED in its entirety without prejudice; and

