

1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 DENNIS SHARKEY,

7 Plaintiff,

8 vs.

9 NORM KRAMER, et al.,

10 Defendants.
11

1:14-cv-01516-AWI-GSA-PC

ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE
PURSUANT TO RULE 41(a)(1) NOTICE OF
DISMISSAL

(Doc. No. 6)

12
13 Dennis Sharkey ("Plaintiff") is a civil detainee proceeding pro se in this civil rights
14 action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on
15 June 18, 2014. (Doc. 2.)

16 On April 22, 2015, Plaintiff filed a notice of dismissal of this action without prejudice.
17 (Doc. 6.) The court construes Plaintiff's notice as being brought pursuant to Rule 41(a)(1). In
18 Wilson v. City of San Jose, the Ninth Circuit explained:

19 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily
20 dismiss his action prior to service by the defendant of an answer or a motion for
21 summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995)
22 (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534
23 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files
24 a notice of dismissal prior to the defendant's service of an answer or motion for
25 summary judgment. The dismissal is effective on filing and no court order is
26 required. Id. The plaintiff may dismiss some or all of the defendants, or some
27 or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987
28 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.

1 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No defendant has filed an
2 answer or motion for summary judgment in this action. Therefore, pursuant to Rule
3 41(a)(1)(A)(i), this case has terminated.

4 Accordingly, IT IS HEREBY ORDERED that his action is DISMISSED in its entirety
5 without prejudice pursuant to Rule 41(a)(1) and the Clerk shall CLOSE this case.

6
7 IT IS SO ORDERED.

8 Dated: April 24, 2015


9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SENIOR DISTRICT JUDGE