

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

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

LANCE WILLIAMS,

No. 2:15-cv-1228-CMK-P

Plaintiff,

vs.

ORDER

M.L. MARTINEZ, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On September 30, 2016, the court directed plaintiff to file an amended complaint within 30 days. Plaintiff was warned that failure to file an amended complaint may result in dismissal of this action for lack of prosecution and failure to comply with court rules and orders. See Local Rule 110. Plaintiff requested and received several extensions of time in which to file his amended complaint. However, to date, no amended complaint has been received by the court.

Instead of filing an amended complaint, plaintiff filed a motion to dismiss (Doc. 12). In this motion, plaintiff states that pursuant to Federal Rule of Civil Procedure 41(a) or (c), he is requesting to dismiss defendant Martinez from this action. As defendant Martinez has not

1 appeared in this matter, no court order is necessary to dismiss any defendant or the action as a
2 whole. As such, the court will construe this motion as a request to voluntarily dismiss defendant
3 Martinez, and direct the Clerk of the Court to terminate Martinez as a defendant to this action.
4 However, there are three other defendants plaintiff has named in this action. As plaintiff
5 mentions only defendant Martinez in his voluntary dismissal request, it does not appear that he
6 has voluntarily dismissed the other defendants. The undersigned found plaintiff's complaint
7 insufficient as to the other defendants, but an order of dismissal has not been entered.

8 As plaintiff has failed to file an amended complaint, or a voluntary dismissal of
9 the entire action, he shall show cause in writing, within 30 days of the date of this order, why this
10 action should not be dismissed for his failure to do so. Plaintiff is again warned that failure to
11 respond to this order may result in dismissal of the action for the reasons outlined above, as well
12 as for failure to prosecute and comply with court rules and orders. See id.

13 Accordingly, IT IS SO ORDERED that:

- 14 1. Plaintiff's motion to dismiss (Doc. 12) is construed as a notice of
15 voluntary dismissal of defendant Martinez, and is therefore resolved by this order;
- 16 2. The Clerk of the Court is directed to terminate defendant Martinez as a
17 defendant to this action; and
- 18 3. Plaintiff shall show cause in writing, within 30 days of the date of this
19 order, why this action should not be dismissed for failure to file an amended complaint or
20 voluntary dismissal of the entire action.

21
22 DATED: September 22, 2017

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
26