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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HESSE,  
  
Plaintiff,  
  
v.  
  
COUNTY OF SACRAMENTO, et al.,  
  
Defendants.

No. 2:21-cv-1931 WBS KJN P

ORDER

Plaintiff, a former county jail inmate proceeding through counsel, filed a notice of dismissal of defendant Stephenye Burnett pursuant to Rules 41(a) or (c) of the Federal Rules of Civil Procedure. (ECF No. 42.)

Rule 41(a)(1)(A) provides:

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, 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.

Fed. R. Civ. P. 41(a)(1)(A). Rule 41(c) provides:

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

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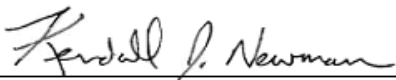
- (1) before a responsive pleading is served; or
- (2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

Id.

Defendant Burnett filed an answer on September 20, 2022. (ECF No. 27.) Therefore, absent a stipulation by all the parties, plaintiff’s notice is ineffective under Rule 41(a)(1)(A) or 41(c).

Accordingly, IT IS HEREBY ORDERED that all defendants notify this court, within seven days, whether they have any objection to the dismissal of defendant Stephenye Burnett from this action. Should defendants fail to respond, plaintiff’s request will be granted pursuant to Fed. R. Civ. P. 41(a)(2).

Dated: November 15, 2023

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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