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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DONALD GLASS,

Plaintiff,

v.

R. BEER, et al.,

Defendants.

CASE NO. 1:04-cv-05466-OWW-SMS PC

ORDER DENYING PLAINTIFF’S MOTION TO TERMINATE/VACATE VOLUNTARY DISMISSAL AND SETTLEMENT AGREEMENT AND RESCHEDULE JURY TRIAL OR TO DIRECT EXPEDITED PAYMENT AND RETURN OF WITNESS FEES AND TRAVEL EXPENSES

(Doc. 243)

**I. Procedural Background**

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Donald Glass (hereinafter “Plaintiff”) a state prisoner proceeding pro se. This case was originally set for trial to begin May 11, 2010. However, a settlement conference was held May 4, 2010 at which the parties entered into a stipulation for voluntary dismissal with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Docs. 230, 231.)

December 27, 2010, Plaintiff filed a “Motion to Terminate/Vacate Voluntary Dismissal and Settlement Agreement and Reschedule Jury Trial or Direct Defendants to Pay Plaintiff and Return Witness Fees and Travel Expenses.” (Doc. 243.) In support of his request to terminate/vacate his voluntary dismissal and the settlement agreement and to reschedule the jury trial, or direct Defendants to pay him, Plaintiff submitted nothing more than argument based on lack of payment, the passage of time, and reiteration of a conversation with the Deputy Attorney General. (Doc. 243, p. 2.) Plaintiff requests that the Deputy Attorney General be directed to

1 arrange for issuance of his settlement check within thirty days, or that the stipulation of voluntary  
2 dismissal be terminated and the case be reset for jury trial. (*Id.*)

3 In opposition, Defendants D. Adkinson, R. Beer, J. Buckley, W. Butts, V. Castillo, N.  
4 Dill, J. Gonzales, J. Keener, L. Loren, J. Marshall, D. Morales, R. Sloss, and B. Streeter  
5 (hereinafter “Defendants”) assert that this court lacks jurisdiction to enforce the settlement  
6 agreement, that there are no grounds to set aside the judgment, and that Plaintiff has an  
7 alternative remedy via civil action to enforce the settlement contract in state court. (Doc. 247.)

8 Plaintiff argues in his reply that this Court “should have set a time schedule or a time  
9 limitation for allowing Plaintiff to withdraw the conditional voluntary dismissal if Defendants  
10 . . . repudiate or intentional [sic] delay or refuse to pay or (honor the settlement agreement once  
11 the budget [sic] signed) comply with the terms of the settlement/voluntary dismissal.” (Doc. 252,  
12 3:18-23.) Relying on *Lau v. Gelndora Unified School District*, 792 F.2d 929 (9th Cir. 1986),  
13 Plaintiff also argues that the Court should have expressly granted him a time frame within which  
14 to withdraw from the settlement/voluntary dismissal for lack of payment (*id.*, at 3:24-4:4) and  
15 that his voluntary dismissal should be viewed as a dismissal without prejudice under Federal  
16 Rule of Civil Procedure 41 (*id.*, at 4:5-12).

## 17 **II. Legal Analysis**

### 18 **A. Settlement/Voluntary Dismissal**

19 Federal courts are courts of limited jurisdiction, possessing only that power authorized by  
20 Constitution and statute. *Kokkonen v. Guardian Life Insurance Co.*, 511 U.S. 375, 377 (1994).  
21 A claim for breach of contract or a settlement agreement, even if part of the consideration was  
22 dismissal of a federal case, will not provide the basis for federal court jurisdiction. *Id.* at 378.  
23 This limited jurisdiction cannot be expanded by judicial decree or consent of the parties. *Id.*  
24 (*citing American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17-18 (1951)). Lack of jurisdiction is  
25 to be presumed and the burden of proving jurisdiction rests with the party asserting jurisdiction.  
26 *Kokkonen*, 511 U.S. at 377. Enforcement of a settlement requires its own basis for jurisdiction.  
27 *Id.*

28 However, even if jurisdiction were assumed, the Ninth Circuit has allowed a judgment

1 based on a settlement agreement to be set aside under Federal Rule of Civil Procedure 60(b)(6)  
2 only under extraordinary circumstances where one of the parties repudiated the agreement.  
3 *Keeling v. Sheet Metal Workers Int. Assoc.*, 937 F.2d 408, 410 (9th Cir. 1991). The issue of  
4 whether this Court has jurisdiction to enforce the agreement underlying the Rule 41 stipulation  
5 entered in this case need not be reached as Defendants have not repudiated the agreement. The  
6 delay in payment to Plaintiff has been occasioned by the state’s budget crisis and an  
7 accumulation of numerous concomitant debts which could not be helped or prevented by the  
8 parties. Defendants submitted evidence that payment of the settlement monies to Plaintiff is  
9 eminently forthcoming -- so much so that it may occur prior to the issuance of this order.  
10 Further, particularly given the state’s budgetary issues, delay in payment (even if protracted) does  
11 not, in and of itself constitute extraordinary circumstances to justify setting aside the stipulation  
12 of voluntary dismissal entered in this case.

13 Further, Plaintiff and Defendants entered into a settlement pursuant to Federal Rule of  
14 Civil Procedure 41(a)(1)(ii), which provides for dismissal “by filing a stipulation of dismissal  
15 signed by all parties who have appeared in the action,” and causes dismissal to be with prejudice  
16 if (as here) the stipulation so specifies. Neither Rule 41, nor any provision of law provides for  
17 jurisdiction of a court over disputes arising out of an agreement that produces the stipulation.  
18 *Kokkonen*, 511 U.S. at 378 (“Enforcement of the settlement agreement, . . . , whether through  
19 award of damages or decree of specific performance, is more than just a continuation or renewal  
20 of the dismissed suit, and hence requires its own basis for jurisdiction”).

21 Finally, Plaintiff’s argument that, per *Lau*, he should have been given a time frame within  
22 which to withdraw the settlement/voluntary dismissal is in error. *Lau* addressed the imposition  
23 of conditions on a plaintiff’s motion for voluntary dismissal after the defendant has filed an  
24 answer or motion for summary judgment. *Lau*, 792 F.2d at 930-931. However, the case at bar  
25 was resolved via a statement that the *parties* had settled rather than by a request filed *solely* by  
26 Plaintiff such that *Lau* is inapplicable. See e.g. *Camacho v. City of San Luis*, 359 Fed. Appx.  
27 794, 797-98 (9th Cir. 2009).

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1 **B. Witness Fees and Travel Expenses**

2 Plaintiff submitted witness fees and travel expenses that were served on three  
3 unincarcerated witnesses (Sgt. Rangel, Lt. Nurse Koeppe, and Sgt. Scaife) to compel their  
4 attendance at trial.

5 When the case resolved short of trial, Sgt. Rangel returned the monies he received to the  
6 Court. Subsequently, the monies from Lt. Nurse Koeppe were also returned and, per Plaintiff's  
7 request, both sums were forwarded to Ms. Michelle Franklin. In their opposition, Defendants  
8 advised that the monies served on Sgt. Scaife had been surrendered to and deposited in the  
9 account of California State Prison – Corcoran and that the check for the return of the fees was  
10 being processed. (Doc. 248.) In fact, March 29, 2011, a check for Sgt. Scaife's witness fees and  
11 travel expenses was filed in this case. April 6, 2011, an order issued for the Clerk of the Court to  
12 forward Sgt. Scaife's witness fees and travel expenses to Ms. Franklin. (Doc. 249.) At the  
13 writing of this order, all of the witness fees and travel expenses which Plaintiff served for  
14 attendance at trial of the three unincarcerated witnesses (Sgt. Rangel, Lt. Nurse Koeppe, and Sgt.  
15 Scaife) have been received and, per Plaintiff's request, forwarded to Mrs. Franklin.

16 Accordingly, the portion of Plaintiff's motion which seeks reimbursement for the witness  
17 fees and travel expenses which were paid for the three unincarcerated witnesses to attend the trial  
18 in this matter is moot.

19 **III. Conclusion**

20 Based on the above, extraordinary circumstances not having been shown such that  
21 Plaintiff's motion to terminate/vacate voluntary dismissal and settlement agreement and  
22 reschedule jury trial or direct defendants to pay Plaintiff, filed December 27, 2010, is HEREBY  
23 DENIED. Further, Plaintiff's request that the witness fees and travel expenses be returned is  
24 DENIED as moot.  
25 IT IS SO ORDERED.

26 **Dated:** April 19, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE