

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT GARCIA,

CASE NO. 1:07-cv-01750-AWI-BAM PC

Plaintiff,

v.

ORDER DISMISSING ACTION, WITH
PREJUDICE, PURSUANT TO FED. R. CIV.
PROC. 41(a)(1)(A)(ii)

A. MASIEL, et al.,

(ECF No. 106)

Defendants.

Plaintiff Robert Garcia ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the complaint filed on December 3, 2007, against Defendant Ojeda for a violation of the Eighth Amendment and Defendant Silva for violations of the First and Eighth Amendments and is set for jury trial on November 15, 2011, before the Honorable Anthony W. Ishii. A settlement conference was held before the Honorable Craig M. Kellison on October 27, 2011, and on November 11, 2011, the parties submitted a stipulation to dismiss this action, with prejudice.

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) "the plaintiff may dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared." The dismissal is without prejudice unless the stipulation states otherwise. Fed. R. Civ. Proc. 41(a)(1)(B). The stipulation is signed by the parties and states the dismissal is with prejudice.

Accordingly, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), it is HEREBY ORDERED that:

1. This action is DISMISSED, with prejudice;

- 1 2. The telephonic trial confirmation hearing on December 19, 2011, at 3:00 p.m. and
2 the trial on February 7, 2012, at 8:30 a.m. are VACATED;
3 3. All pending motions are terminated; and
4 4. The Clerk of the Court is directed to close this action.

5 IT IS SO ORDERED.

6 Dated: November 6, 2011


CHIEF UNITED STATES DISTRICT JUDGE