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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL R. PEREZ,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:08-cv-00466-OWW-SMS PC

ORDER DISMISSING ACTION, WITH
PREJUDICE, PURSUANT TO FED. R. CIV.
P. 41(A)(2), AND DIRECTING CLERK OF
COURT TO CLOSE FILE

(Docs. 49, 50, and 53)

Plaintiff Daniel R. Perez, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on February 15, 2008. This action is proceeding on Plaintiff's amended complaint, filed November 5, 2008, against Defendants Olmos, Perez, Sanchez, Paz, and Munoz for use of excessive physical force, against Defendant Munoz for the unconstitutional conditions of confinement in cell 232, and against Defendants Marquez, Jimenez, Haines, and Talle for denial of medical care. Defendants answered the amended complaint, and a scheduling order is in place.

On May 24, 2010, Plaintiff filed what the Court construed as a motion for voluntary dismissal. At this stage in the proceedings, dismissal requires a stipulation signed by all parties or a court order. Fed. R. Civ. P. 41(a). Therefore, on May 27, 2010, the Court ordered Defendants to advise the Court within fifteen days whether they were willing to stipulate to dismissal of this action and if so, whether they were willing to stipulate to dismissal with or without prejudice and with or without a waiver of costs. Plaintiff was ordered to file a reply within twenty-five days from the date of service of Defendants' response and state whether he was willing to stipulate to dismissal on the

1 terms set forth by Defendants and if not, identify his objections. On June 14, 2010, Defendants filed
2 their response and agreed to stipulate to dismissal of this action, with prejudice, in exchange for a
3 waiver of their costs. More than forty days have passed and Plaintiff has not filed a reply.

4 Plaintiff sought dismissal of this action voluntarily and was provided with the opportunity
5 to object to the conditions of dismissal set forth by Defendants, but failed to respond. The Court
6 finds the terms set forth by Defendants to be proper. Fed. R. Civ. P. 41(a)(2). Accordingly, this
7 action is HEREBY DISMISSED, with prejudice in exchange for a waiver of costs, and the Clerk of
8 the Court SHALL close the file. Id.

9
10 IT IS SO ORDERED.

11 **Dated: July 29, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE