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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SERGIO ALEJANDRO GAMEZ,
Plaintiff,
vs.
F. GONZALEZ, et al.,
Defendants.

1:08-cv-01113-EPG-PC
ORDER FOR DEFENDANTS HOLLAND,
GONZALEZ, TYREE, GENTRY, ADAME,
AND JAKABOSKY TO RESPOND TO
PLAINTIFF’S NOTICE OF DISMISSAL,
WITHIN TWENTY (20) DAYS
(ECF No. 233.)

Sergio Alejandro Gamez (“Plaintiff”) is a state prisoner proceeding in this civil rights action pursuant to 42 U.S.C. § 1983 with counsel appointed for limited purpose.¹ Plaintiff filed the Complaint commencing this action on August 1, 2008. (ECF No. 1.) This case now proceeds on the Fourth Amended Complaint filed on November 8, 2013, with Plaintiff’s claims for due process violations concerning his 2010 and 2012 gang validations, and related retaliation claims, against defendants Holland, Gonzalez, Tyree, Gentry, Adame, and Jakabosky (collectively, “Defendants”). (ECF No. 147.)

¹ On December 10, 2015, the Court appointed M. Greg Mullanax as counsel for Plaintiff, for the limited purpose of assisting Plaintiff with preparing for and participating in the February 18, 2016 settlement conference. (ECF No. 212.)

1 The parties to this case have voluntarily consented to have the undersigned, Magistrate
2 Judge Erica P. Grosjean, conduct any and all further proceedings in the case, including
3 conducting the trial and entry of a final judgment.²

4 On February 18, 2016, a settlement conference was held in this case before Magistrate
5 Judge Jennifer L. Thurston, and the case settled. (ECF No. 232.) On April 6, 2016, Plaintiff
6 filed a notice of voluntary dismissal of this case, with prejudice. (ECF No. 233.)

7 Federal Rule of Civil Procedure 41(a) “allows plaintiffs voluntarily to dismiss some or
8 all of their claims against some or all defendants.” Romoland Sch. Dist. v. Inland Empire
9 Energy Ctr., LLC, 548 F.3d 738, 748 (9th Cir. 2008). Where a defendant has served an answer
10 or a motion for summary judgment but has not signed a stipulation to dismiss, a plaintiff’s
11 voluntary dismissal must be effected through Rule of Civil Procedure 41(a)(2). See Fed. R.
12 Civ. P. 41(a); Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1999). Rule 41(a)(2)
13 provides in pertinent part: “Except as provided in Rule 41(a)(1), an action may be dismissed at
14 the plaintiff’s request only by court order, on terms that the court considers proper. . . . Unless
15 the order states otherwise, a dismissal under this paragraph (2) is without prejudice.” Fed. R.
16 Civ. P. 41(a)(2); Hargis v. Foster, 312 F.3d 404, 412 (9th Cir. 2003). “A district court should
17 grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it
18 will suffer some plain legal prejudice as a result.” Smith v. Lenches, 263 F.3d 972, 975 (9th
19 Cir. 2001).

20 In this case, defendants Gonzales and Gentry filed and served an answer on December
21 19, 2013 (ECF No. 149); defendants Holland, Tyree, and Adame filed and served an answer on
22 March 20, 2014 (ECF No. 156); and defendant Jakobosky filed and served an answer on May
23 1, 2014 (ECF No. 164). Therefore, defendants Holland, Gonzalez, Tyree, Gentry, Adame, and
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26 ² On May 9, 2014, defendants Gonzalez, Gentry, Holland, Tyree, Adame, and Jakobosky
27 consented to the jurisdiction of a Magistrate Judge under 28 U.S.C. § 636(c). (ECF No. 169.) On December 8,
28 2015, Plaintiff consented to the jurisdiction of a Magistrate Judge under 29 U.S.C. § 636(c). (ECF No. 208.) On
December 10, 2015, this case was reassigned to Magistrate Judge Erica P. Grosjean for all further proceedings.
(ECF No. 210.)

1 Jakabosky shall be required to file a response to Plaintiff's notice of dismissal, showing
2 whether they will suffer some plain legal prejudice as a result of the dismissal.

3 Accordingly, **IT IS HEREBY ORDERED** that within twenty (20) days of the date of
4 service of this order, defendants Holland, Gonzalez, Tyree, Gentry, Adame, and Jakabosky
5 shall respond in writing to Plaintiff's notice of dismissal.

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7 IT IS SO ORDERED.

8 Dated: April 7, 2016

9 /s/ Eric P. Grij
10 UNITED STATES MAGISTRATE JUDGE
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