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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
10 11	ALVARA QUEZADA,) Case No.: 1:09-cv-01856-LJO-BAM (PC)	
12	Plaintiff,	ORDER REQUIRING PLAINTIFF TO NOTIFY	
13	V.	COURT IF HE WISHES TO WITHDRAW HIS REQUEST FOR A VOLUNTARY DISMISSAL OF	
14	FISHER, et al.,	 DEFENDANT CORRECTIONAL OFFICER C. SCOTT 	
15	Defendants.		
16		(ECF No. 72)	
17) THIRTY-DAY DEADLINE	
18)	
19	Plaintiff Alvaro Quezada ("Plaintiff") is a state prisoner proceeding pro se and in forma		
20	pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds against		
21	Defendants Fisher, Jose, Doria, Scott and Ortiz for violation of the Fourteenth Amendment to the		
22	United States Constitution.		
23	I. Background		
24		ice of voluntary dismissal of Defendant Scott, pursuant	
25	to Fed. R. Civ. P. 41(a). (ECF No. 72.) In his filing, Plaintiff states that he is informed Defendant Scott		
26	is deceased, and as a result he wishes to dismiss Defendant Scott from this action. He further extends		
27	his condolences and sympathies to "all that have been affected by Mr. Scott's death." (Id. at p. 1.) He		
28	specifies that his intended dismissal operates on	ly as to Defendant Scott and to no other defendants.	

II. Standard

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2 Under Federal Rule of Civil Procedure 41(a)(2), a plaintiff may request dismissal after an 3 opposing party has served either an answer or a motion for summary judgment, as in this case, "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "A motion for 4 voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) should be granted unless a 5 defendant can show that it will suffer some plain legal prejudice as a result of the dismissal." Hepp v. 6 7 Conoco, Inc., 97 F. App'x 124, 125 (9th Cir. 2004) (citations omitted). "Legal prejudice is prejudice to 'some legal interest, some legal claim, [or] some legal argument." Maxum Indem. Ins. Co. v. A-1 All 8 Am. Roofing Co., 299 F. App'x 664, 666 (9th Cir. 2008) (quoting Westlands Water Dist. V. United 9 States, 100 F.3d 94, 97 (9th Cir. 1996)). 10

III. Discussion

The Court finds that Defendant Scott, or his successors-in-interest(s), will suffer no legal prejudice by being dismissed from this action. Defendant Scott did not file a counterclaim or raise any other issue which must be decided in this matter.

Nevertheless, Defendant Scott or his successor(s) could be prejudiced by a dismissal without
prejudice. Plaintiff's allegations underlying his claim against Defendant Scott occurred over eight
years ago, and his motion comes after months of discovery and the filing of a motion for summary
judgment. Without any ruling on that motion or a dismissal with prejudice, Defendant Scott's
successor(s) could face potential re-litigation of a matter that occurred many years ago and involving a
now-deceased witness.

For these reasons, the Court finds that under these circumstances, if Plaintiff's request for a voluntary dismissal is granted, it should be done with prejudice. A court granting a motion for voluntary dismissal with conditions must give the plaintiff "a reasonable period of time within which [either] to refuse the conditional voluntary dismissal by withdrawing [the] motion for dismissal or to accept the dismissal despite the imposition of conditions." <u>Beard v. Sheet Metal Workers Union</u>, 908 F.2d 474, 476 (9th Cir. 1990). Therefore, the Court shall grant Plaintiff thirty (30) days to determine whether he wishes to refuse the conditional voluntary dismissal recommended here.

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1	IV. Conclusion and Order		
2	Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:		
3	1. Plaintiff shall notify the Court, within thirty (30) days from the date of service of this		
4	order, if he wishes to withdraw his request for voluntary dismissal filed October 1,		
5		2015 (ECF No. 72); and	
6		2. If Plaintiff's request for voluntary dismissal is not withdrawn within thirty (30) days,	
7	the Court will issue an order recommending that the District Judge grant Plaintiff's		
8	request and dismiss this action against Defendant Correctional Officer C. Scott with		
9		prejudice.	
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11	IT IS SO ORDERED.		
12	Da	ited: October 6, 2015 /s/ Barbara A. McAuliffe	
13		UNITED STATES MAGISTRATE JUDGE	
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