



1 **II. Standard**

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

11 **III. Discussion**

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

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

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

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**IV. Conclusion and Order**

Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

1. Plaintiff shall notify the Court, within thirty (30) days from the date of service of this order, if he wishes to withdraw his request for voluntary dismissal filed October 1, 2015 (ECF No. 72); and
2. If Plaintiff's request for voluntary dismissal is not withdrawn within thirty (30) days, the Court will issue an order recommending that the District Judge grant Plaintiff's request and dismiss this action against Defendant Correctional Officer C. Scott with prejudice.

IT IS SO ORDERED.

Dated: October 6, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE