

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **LUIS ROBERTO MARTINEZ ,**

9 **Plaintiff**

10 **v.**

11 **KINGS COUNTY, et al.,**

12 **Defendants**

CASE NO. 1:10-CV-1569 AWI DLB (PC)

**ORDER CLOSING CASE IN LIGHT OF
STIPULATION FOR DISMISSAL WITH
PREJUDICE AND DENYING REQUEST
TO TAKE DEPOSITION AS MOOT**

(Doc. Nos. 44, 45)

13
14
15
16 On January 5, 2015, the parties filed a stipulation for dismissal of this case with prejudice
17 pursuant to Federal Rule of Civil Procedure 41(a)(1). See Doc. No. 45. The notice is signed by
18 all remaining parties who have appeared in this case.

19 Rule 41(a)(1), in relevant part, reads:

20 (A) . . . the plaintiff may dismiss an action without a court order by filing: (i) a
21 notice of dismissal before the opposing party serves either an answer or a motion
22 for summary judgment; or (ii) a stipulation of dismissal signed by all parties who
23 have appeared. . . . (B) Unless the notice or stipulation states otherwise, the
dismissal is without prejudice.

24 Rule 41(a)(1)(A)(ii) thus allows the parties to dismiss an action voluntarily, after service of an
25 answer, by filing a written stipulation to dismiss signed by all of the parties who have appeared,
26 although an oral stipulation in open court will also suffice. See Carter v. Beverly Hills Sav. &
27 Loan Asso., 884 F.2d 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th
28

1 Cir. 1986). Once the stipulation between the parties who have appeared is properly filed or made
2 in open court, no order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro.
3 41(a)(1)(A); Eitel, 782 F.2d at 1473 n.4. “Caselaw concerning stipulated dismissals under Rule
4 41(a) (1) (ii) is clear that the entry of such a stipulation of dismissal is effective automatically and
5 does not require judicial approval.” In re Wolf, 842 F.2d 464, 466 (D.C. Cir. 1989); Gardiner v.
6 A.H. Robins Co., 747 F.2d 1180, 1189 (8th Cir. 1984); see also Gambale v. Deutsche Bank AG,
7 377 F.3d 133, 139 (2d Cir. 2004); Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074,
8 1077 (9th Cir. 1999).

9
10 As the parties have filed a stipulation for dismissal of this case with prejudice under Rule
11 41(a)(1) that is signed by all remaining parties who have made an appearance, this case has
12 terminated. See Fed. R. Civ. Pro. 41(a)(1)(A)(ii); In re Wolf, 842 F.2d at 466; Gardiner, 747 F.2d
13 at 1189; see also Gambale, 377 F.3d at 139; Commercial Space Mgmt., 193 F.3d at 1077.

14
15
16 Therefore, IT IS HEREBY ORDERED that the Clerk shall CLOSE this case in light of the
17 filed and properly signed Rule 41(a)(1)(A)(ii) Stipulation Of Dismissal With Prejudice and
18 Defendant’s request to take plaintiff’s deposition (Doc. No. 44) is DENIED as moot.

19
20 IT IS SO ORDERED.

21 Dated: February 23, 2015

22 
23 SENIOR DISTRICT JUDGE