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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,)	1:10-cv-01699-AWI-BAM (PC)
)	
Plaintiff,)	ORDER CLOSING CASE IN LIGHT OF
)	UNOPPOSED REQUEST TO DISMISS
v.)	
)	(ECF No. 80)
JOSE MASIEL, et al.,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff Kevin E. Fields (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on September 17, 2010. Defendants Masiel, Aguirre and Hernandez have answered the complaint.

On September 10, 2014, Plaintiff filed a motion requesting voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). (ECF No. 80.) On September 25, 2014, Defendants filed a statement of non-opposition. (ECF No. 82.)

Federal Rule of Civil Procedure 41(a) “allows plaintiffs voluntarily to dismiss some or all of their claims against some or all defendants.” Romoland Sch. Dist. v. Inland Empire Energy Ctr., LLC, 548 F.3d 738, 748 (9th Cir. 2008). Where a defendant has served an answer or a motion for summary judgment but has not signed a stipulation to dismiss, a plaintiff’s voluntary dismissal must be effected through Rule of Civil Procedure 41(a)(2). See Fed. R. Civ. P. 41(a); Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1999). Rule 41(a)(2) provides in relevant part: “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s

1 request only by court order, on terms that the court considers proper. . . . Unless the order states
2 otherwise, a dismissal under this paragraph (2) is without prejudice.” Fed. R. Civ. P. 41(a)(2);
3 Hargis v. Foster, 312 F.3d 404, 412 (9th Cir. 2003). “A district court should grant a motion for
4 voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some
5 plain legal prejudice as a result.” Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001).

6 In this instance, Defendants have filed and served an answer, and Plaintiff’s motion did
7 not contain a stipulation signed by Defendants. As such, an automatic dismissal under Rule
8 41(a)(1) is not possible. See Fed. R. Civ. P. 41(a)(1). However, Defendants have not opposed
9 the request and consent to dismissal of this action. Given Defendants’ non-opposition, the Court
10 finds no reason to deny Plaintiff’s request for voluntary dismissal under Rule 41(a)(2).
11 Therefore, the Court shall grant the motion and close this action. See Fed. R. Civ. P. 41(a)(2);
12 Hargis, 312 F.3d at 412; Smith, 263 F.3d at 975.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s motion for voluntary dismissal under Rule 41(a)(2) is GRANTED;
- 15 2. All pending motions, if any, are TERMINATED; and
- 16 3. The Clerk of the Court is directed to CLOSE this case.

17 This terminates the action in its entirety.

18
19 IT IS SO ORDERED.

20 Dated: September 30, 2014



21 SENIOR DISTRICT JUDGE