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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,
Plaintiff,
vs.
P. PATTERSON, et al.,
Defendants.

1:10-cv-01700-LJO-GSA-PC

ORDER FOR DEFENDANTS PATTERSON,
MOLINA, AND FINLEY TO RESPOND TO
PLAINTIFF'S NOTICE OF VOLUNTARY
DISMISSAL OF CERTAIN CLAIMS,
WITHIN TWENTY (20) DAYS
(Doc. 48.)

Kevin E. Fields (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff’s First Amended Complaint filed on May 31, 2013, against defendant C/O Patterson for use of excessive force; against defendants C/O Patterson and Sgt. Molina for retaliation; and against defendants Sgt. Molina and Lt. Finley for failure to comply with state law.¹ (Doc. 16.)

On January 29, 2015, Plaintiff filed a notice of voluntary dismissal of certain claims pursuant to Rule 41(a). (Doc. 48.) Plaintiff seeks to voluntarily dismiss his retaliation claims against defendants Patterson and Molina, with prejudice, and his state-law claims against defendants Molina and Finley, with prejudice. (Id.)

¹ On March 12, 2014, the court issued an order dismissing all other claims and defendants from this action for failure to state a claim. (Doc. 25.)

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

14 In this case, defendants Patterson, Molina, and Finley filed an answer on June 9, 2014.
15 (Doc. 30.) Therefore, defendants Patterson, Molina, and Finley shall be required to file a
16 response to Plaintiff’s notice of voluntary dismissal, showing whether they will suffer some
17 plain legal prejudice as a result of the dismissal.

18 Accordingly, **IT IS HEREBY ORDERED** that within twenty (20) days of the date of
19 service of this order, defendants Patterson, Molina, and Finley shall respond in writing to
20 Plaintiff’s notice of voluntary dismissal.

21 IT IS SO ORDERED.

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23 Dated: February 2, 2015

/s/ Gary S. Austin
24 UNITED STATES MAGISTRATE JUDGE
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