UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

TROY MITCHELL NAYLOR,

Plaintiff,

V.

CASE NO. 1: 11-cv-01649-LJO-MJS (PC)

ORDER DIRECTING DEFENDANT DUVALL TO RESPOND TO PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL

(ECF NO. 44)

Defendants.

FOURTEEN (14) DAY DEADLINE

Plaintiff is a civil detainee who is being held at Coalinga State Hospital. He is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. (ECF Nos. 1 & 5.)

On November 2, 2015, Plaintiff filed a notice of voluntary dismissal. (ECF No. 44.) It appears from Plaintiff's motion that he seeks dismissal with prejudice. Plaintiff states that he "realizes that the subject matter can never be re-opened and forfeits any future legal action in this matter." (ECF No. 44 at 2.)

Federal Rule of Civil Procedure 41(a)(1) allows a plaintiff to dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" or by filing "a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A)(i)-(ii). The Court may also dismiss an action under Federal Rule of Civil Procedure 41(a)(2) at a plaintiff's request. Unless otherwise indicated, the dismissal would be without

prejudice.

Here, Defendant Duvall has appeared in the action. (ECF Nos. 11, 30.) The parties have litigated a motion to dismiss, and Defendant Duvall has filed an answer to Plaintiff's Complaint. (ECF Nos. 12, 19, 23, 29, 30.) Plaintiff's notice does not contain a stipulation of dismissal by both parties, and Defendant Duvall has not filed a response to Plaintiff's notice of voluntary dismissal.

Accordingly, it is HEREBY ORDERED that:

Defendant Duvall shall respond within **fourteen days** of service of this order to Plaintiff's notice of voluntary dismissal and state whether he opposes dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

IT IS SO ORDERED.

Dated: <u>December 3, 2015</u> <u>Isl Michael J. Seng</u> UNITED STATES MAGISTRATE JUDGE