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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   HUSSEIN ALI KIETTY,   No. 1:13-cv-00312-DAD-SAB

12   Plaintiff,

13   v.   ORDER GRANTING PLAINTIFF'S MOTION
                                                   TO VOLUNTARILY DISMISS DEFENDANT
14   A. WALKER, et al.,   L. RUMBLES FROM THE ACTION

15   Defendants.   (Doc. No. 50)

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18   On March 5, 2013, plaintiff Hussein Ali Kietty, proceeding pro se and in forma pauperis,

19   commenced this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on

20   plaintiff's excessive use of force claim brought against defendants Deathriage, Duty, Walker,

21   Brumbaugh, Silva, Astorga, and Rumbles.

22   On November 5, 2014, defendants Deathriage, Duty, Walker, Brumbaugh, Silva, and

23   Astorga filed an answer to the complaint. (Doc. No. 28.) Defendant Rumbles filed an answer on

24   October 6, 2015. (Doc. No. 46.)

25   On February 1, 2016, plaintiff filed a motion to voluntarily dismiss defendant Rumbles

26   from the action. (Doc. No. 50.) On March 17, 2016, defendant Rumbles filed a statement of non-

27   opposition to plaintiff's motion. (Doc. No. 54.)

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1   A motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2)

2   should be granted unless a defendant can show that he will suffer some plain legal prejudice as a

3   result of the dismissal. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Rule 42(a)(2)

4   allows the court to grant a plaintiff's dismissal motion with appropriate terms and conditions to

5   protect the defendant from prejudice. *U.S. ex rel., Sequoia Orange Co. v. Baird-Neece Packing*

6   *Corp.*, 151 F.3d 1139, 1145 (9th Cir. 1988).

7   In light of the statement of non-opposition filed on behalf of defendant Rumbles,

8   dismissal is appropriate and plaintiff's motion will be GRANTED. Fed. R. Civ. P. 4(a)(2).

9   Accordingly, defendant Rumbles is DISMISSED from this action, and the matter is referred back

10   to the assigned magistrate judge for further proceedings.

11   IT IS SO ORDERED.

12   Dated: **March 21, 2016**

13   UNITED STATES DISTRICT JUDGE