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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DAVID PINO,) Case No.: 1:13cv01593 LJO DLB (PC)
)
Plaintiff,) FINDINGS AND RECOMMENDATIONS
) DENYING PLAINTIFF’S REQUEST FOR
v.) VOLUNTARY DISMISSAL
) (Document 21)
LADD, et al.,)
)
Defendants.) THIRTY-DAY OBJECTION DEADLINE
)
)

Plaintiff David Pino (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on October 3, 2013. This action is proceeding on Plaintiff’s First Amended Complaint against Defendants Ladd, Musselman, Hernandez, Lee, Moore and Watson for violation of the First Amendment.

On February 20, 2015, Defendants filed a motion for summary judgment based on Plaintiff’s failure to exhaust his administrative remedies. The motion is ready for decision.

On April 15, 2015, Plaintiff filed a notice of voluntary dismissal. Plaintiff indicated that he is “unable to further litigate this case by circumstances beyond his control,” and requested that any dismissal be without prejudice. ECF No. 21, at 1.

The Court ordered Defendants to respond to Plaintiff’s request on April 16, 2015. Defendants filed their response on May 6, 2015. Defendants object to an unconditional dismissal without

1 prejudice because such a dismissal would delay final resolution in the event Plaintiff re-filed this
2 action. Defendants request that the dismissal be with prejudice. Alternatively, Defendants request
3 that any dismissal without prejudice be conditioned on (1) Plaintiff paying Defendants' costs for this
4 action if he refiles this action, and (2) staying any subsequent proceedings until Plaintiff has complied.
5 Fed. R. Civ. Proc. 41(d).

6 As Defendants have appeared in this action, the action may be dismissed at Plaintiff's request
7 only by Court order, and only on terms that the Court considers just and proper. Fed. R. Civ. Proc.
8 41(a)(2).

9 Given that Defendants' motion for summary judgment is pending and may be dispositive of
10 this action, the Court agrees that a dismissal without prejudice unfairly hinders Defendants' ability to
11 resolve this action in their favor. Moreover, Plaintiff's status as a pro se prisoner proceeding in forma
12 pauperis makes it unlikely that he will be able to pay costs for this action should he refile.

13 Therefore, the Court finds that there are no just or proper terms to make dismissal appropriate
14 at this stage.

15 **CONCLUSION AND RECOMMENDATION**

16 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's notice of voluntary
17 dismissal be DENIED.

18 These Findings and Recommendations will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
20 after being served with these Findings and Recommendations, the parties may file written objections
21 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and

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1 Recommendations.” A party may respond to another party’s objections by filing a response within
2 **fourteen (14) days** after being served with a copy of that party’s objections. The parties are advised
3 that failure to file objections within the specified time may waive the right to appeal the District
4 Court’s order. Martinez v. Ylst, 951 F.2d 1153, 1157 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 Dated: May 14, 2015

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE