UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

DAVID PINO,) Case No.: 1:13cv01593 LJO DLB (PC)
Plaintiff, v.) ORDER VACATING FINDINGS AND) RECOMMENDATIONS) (Documents 26 and 27)
LADD, et el., Defendants.) ORDER GRANTING PLAINTIFF'S NOTICE) FOR VOLUNTARY DISMISSAL) (Document 21)

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 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. They object to an unconditional dismissal without prejudice because such a dismissal would delay final resolution in the event Plaintiff re-filed this action.

Defendants request that the dismissal be with prejudice. Alternatively, Defendants request that any

dismissal without prejudice be conditioned on (1) Plaintiff paying Defendants' costs for this action if 1 he refiles this action, and (2) staying any subsequent proceedings until Plaintiff has complied. Fed. R. 2 3 Civ. Proc. 41(d). 4 On May 15, 2015, Plaintiff responded to Defendants' request and agreed to dismiss the action 5 with prejudice. As Defendants have appeared in this action, the action may be dismissed at Plaintiff's request 6 only by Court order, and only on terms that the Court considers just and proper. Fed. R. Civ. Proc. 7 41(a)(2). Based on the parties' agreement to dismiss this action with prejudice, the Court will grant 8 9 Plaintiff's request for voluntary dismissal. Accordingly, IT IS HEREBY ORDERED that: 10 1. The Findings and Recommendations (Documents 26 and 27) are VACATED; 11 12 2. Plaintiff's notice of voluntary dismissal is GRANTED; and 13 3. This action is DISMISSED WITH PREJUDICE. This terminates this action in its entirety. 14 IT IS SO ORDERED. 15 16 /s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE Dated: **May 18, 2015** 17 18 19 20 21 22 23 24 25 26 27

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