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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COSME PRESAS,

Plaintiff,

v.

FUSSEL, et al.,

Defendants.

No. 1:13-cv-02038-DAD-SKO (PC)

**ORDER CLOSING CASE IN LIGHT OF
STIPULATION FOR DISMISSAL WITH
PREJUDICE**

(Docs. 76, 77)

Plaintiff, Cosme Presas, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On December 3, 2018, the parties filed a stipulation of voluntary dismissal with prejudice of this matter pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).¹

Rule 41(a)(1)(A), in relevant part, reads:

the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; (ii) a stipulated dismissal signed by all parties who have appeared.

Rule 41(a)(1)(A)(ii) thus allows the parties to dismiss an action voluntarily, after service of an answer, by filing a written stipulation to dismiss signed by all of the parties who have appeared, although an oral stipulation in open court will also suffice. *Carter v. Beverly Hills Sav. & Loan Assn.*, 884 F.2d 1186, 1191 (9th Cir. 1989); *Eitel v. McCool*, 782 F.2d 1470, 1472-73

¹ Plaintiff filed a separate notice of voluntary dismissal under Rule 41(a) that same day. (*See* Doc. 77.)

1 (9th Cir. 1986). Once the stipulation between the parties who have appeared is properly filed or
2 made in open court, no order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro.
3 41(a)(1)(ii); *Eitel*, 782 F.2d at 1473 n.4. “Caselaw concerning stipulated dismissals under Rule
4 41(a)(1)(ii) is clear that the entry of such a stipulation of dismissal is effective automatically and
5 does not require judicial approval.” *In re Wolf*, 842 F.2d 464, 466 (D.C. Cir. 1989); *Gardiner v.*
6 *A.H. Robins Co.*, 747 F.2d 1180, 1189 (8th Cir. 1984); *see also Gambale v. Deutsche Bank AG*,
7 377 F.3d 133, 139 (2d Cir. 2004); *Commercial Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074,
8 1077 (9th Cir. 1999) *cf. Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997) (addressing
9 Rule 41(a)(1) dismissals). “The plaintiff may dismiss some or all of the defendants, or some or
10 all of his claims, through a Rule 41(a)(1) notice,” and the dismissal “automatically terminates the
11 action as to the defendants who are the subjects of the notice.” *Wilson*, 111 F.3d at 692; *Concha*
12 *v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995).

13 This case terminated when the parties filed a stipulation for dismissal with prejudice under
14 Rule 41(a)(1)(A)(ii) that was properly signed by all parties who have appeared in this action. *See*
15 Fed. R. Civ. Pro. 41(a)(1)(A)(ii); *In re Wolf*, 842 F.2d at 466; *Gardiner*, 747 F.2d at 1189; *see*
16 *also Gambale*, 377 F.3d at 139; *Commercial Space Mgmt*, 193 F.3d at 1077; *cf. Wilson*, 111 F.3d
17 at 692.

18 Therefore, IT IS HEREBY ORDERED that the Clerk of the Court close this case in light
19 of the properly executed Stipulation Of Dismissal With Prejudice under Federal Rule of Civil
20 Procedure 41(a)(1)(A)(ii) that was filed on December 3, 2018, (Doc. 76).

21 IT IS SO ORDERED.

22
23 Dated: December 4, 2018

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE