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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSE AUGUSTINE MAYORGA,

Plaintiff,

v.

ESLICK, et al.,

Defendants.

Case No. 1:14-cv-00099-LJO-SKO (PC)

ORDER DIRECTING PARTIES TO ADVISE
WHETHER THEY STIPULATE TO
DISMISSAL OF THIS ACTION PER
FEDERAL RULE OF CIVIL PROCEDURE
41

(Doc. 37)

_____ /

Plaintiff, Jose Augustine Mayorga, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 23, 2014. On January 15, 2016, Plaintiff filed a notice of withdrawal seeking to dismiss this action. The Court will construe Plaintiff’s notice as an attempt to voluntarily dismiss this action pursuant to Federal Rule of Civil Procedure 41 (“Rule 41”). (Doc. 37.)

Rule 41(a)(1)(A) allows a Plaintiff to “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; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Subsection (B) of Rule 41 provides that, “[u]nless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Subsection (2) of Rule 41 provides in pertinent part that, “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court

1 considers proper. . . .” Thus, at this stage in the litigation, Plaintiff may not simply dismiss the
2 action of his own accord.

3 Accordingly, IT IS HEREBY ORDERED that defense counsel is directed: (1) to advise the
4 Court within fifteen (15) days from the date of service of this order whether Defendants are
5 willing to stipulate to dismissal of this action under Federal Rule of Civil Procedure 41; (2) if
6 Defendants are willing to do so, defense counsel is to concurrently submit a statement stipulating
7 to dismissal of this action on Defendants’ behalf, indicating whether Defendants are stipulating to
8 dismissal of the action with or without prejudice and whether Defendants are willing to waive
9 costs to which they might otherwise be entitled; and (3) if Defendants are not willing to stipulate
10 to the dismissal of this action, defense counsel is to concurrently submit any objections to the
11 dismissal of this action.

12 IT IS HEREBY FURTHER ORDERED that Plaintiff shall take one of the following
13 actions within twenty-five (25) days of the date defense counsel’s response is filed with the Court:
14 (1) if Defendants are willing to stipulate to dismissal of this action under Federal Rule of Civil
15 Procedure 41, Plaintiff shall submit a statement, signed under penalty of perjury, indicating
16 whether he desires to stipulate to dismissal of this action on any terms and/or conditions set forth
17 in Defendant’s response; and (2) if Defendants are not willing to stipulate to dismissal of this
18 action, Plaintiff shall file his arguments in response to any objections raised by Defendants to the
19 dismissal of this action.

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21 IT IS SO ORDERED.

22 Dated: January 20, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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