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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 PLAINTIFF TO
ADVISE REGARDING DISMISSAL OF
ACTION

(Docs. 37, 38, 39)

_____ /

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 which is construed as an attempt to voluntarily dismiss this action pursuant to Rule 41 of the Federal Rules of Civil Procedure (“Rule 41”). (Doc. 37.) On January 20, 2016, an order issued directing the parties to advise whether they stipulate to dismissal of this action in accordance with Rule 41. (Doc. 38.) On January 25, 2016, Defendants filed a statement of non-opposition indicating that they do not oppose dismissal under Rule 41(a)(1)(A)(i); alternatively Defendants “stipulate to dismissal of this action without prejudice pursuant to Rule 41(a)(2)” and “reserve their right to seek payment of all fees, costs and expenses incurred in this action if Plaintiff subsequently re-files a complaint against Defendants based on or including the same claims raised in this action.” (Doc. 39.)

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Accordingly, IT IS HEREBY ORDERED that, within twenty-five (25) days of the date of service of this order Plaintiff shall submit a statement, signed under penalty of perjury, indicating whether he desires to dismiss this action under Rule 41(a)(1)(A)(i), or whether he desires to stipulate to dismissal of this action under Rule 41(a)(2) on the terms set forth in Defendant's statement of non-opposition (Doc. 39).

IT IS SO ORDERED.

Dated: January 27, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE