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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSE AUGUSTINE MAYORGA,

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

Plaintiff,

ORDER FOR DEFENDANTS
TO PREPARE STIPULATION
OF DISMISSAL

v.

ESLICK, et al.,

(Docs. 37, 38, 39, 41)

Defendants.

_____ /

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 Federal Rule of Civil Procedure 41 (hereinafter “Rule 41”). (Doc. 37.) On January 20, 2016, an order issued directing the parties to advise whether they are willing to stipulate to dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure. (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.) Plaintiff responded that he desires to stipulate to the dismissal of this action on the

1 terms set forth by Defendants in their statement of non-opposition. (Doc. 41.)

2 Accordingly, it is HEREBY ORDERED that:

3 (1) Within fourteen (14) days of the date of service of this order, Defendants are to
4 prepare and forward¹ to Plaintiff a stipulation dismissing this action without
5 prejudice pursuant to Rule 41(a)(2) wherein they may indicate reservation of their
6 right to seek payment of all fees, costs, and expenses incurred in this action in the
7 event Plaintiff subsequently re-files a complaint against Defendants based on or
8 including the same claims raised in this action;

9 (2) Defendants shall simultaneously file with the Court, a copy of their proof of service
10 of the stipulation on Plaintiff;

11 (3) Plaintiff must sign and return the stipulation to defense counsel within fourteen
12 (14) days of receipt; and

13 (4) Within forty-five (45) days of the date of service of this order, Defendants must
14 file a copy of the fully executed stipulation or a statement indicating why they are
15 unable to do so.

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17 IT IS SO ORDERED.

18 Dated: February 17, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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27 ¹ Defendants may personally serve the stipulation on Plaintiff and file the fully executed document within fourteen
28 (14) days of the date of service of this order. If Defendants forward the stipulation to Plaintiff via the United States
Postal Service, they must include a self-addressed, stamped envelope for Plaintiff to return the signed stipulation to
them.