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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TOMMIE LEE BAKER,  
Plaintiff,  
v.  
J. ALVA, et al.,  
Defendants.

CASE NO. 1:14-cv-01020-AWI-MJS (PC)  
**FINDINGS AND RECOMMENDATIONS  
TO GRANT PLAINTIFF'S MOTION TO  
DISMISS  
(ECF No. 26)  
FOURTEEN (14) DAY OBJECTION  
DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Alva, Mendoza, Franco, and O'Daniels on Plaintiff's Eighth Amendment failure to protect claim. (ECF Nos. 11 & 13.)

On March 13, 2015, Plaintiff filed a motion to dismiss the action with prejudice on the ground he no longer has any dispute with Defendants requiring resolution by the Court. (ECF No. 26.) Defendants filed a statement of no opposition. (ECF No. 28.)

Where a defendant has appeared in the action by filing an answer, Plaintiff may dismiss the action only by stipulation signed by all parties who have appeared or by court order on terms the Court deems proper. Fed. R. Civ. P. 41(a). Here, Defendants have filed an answer. (ECF No. 19.) No signed stipulation for dismissal is before the Court. Nevertheless, there is no objection to dismissal of the action with prejudice. The

1 Court finds that dismissal with prejudice is proper. Accordingly, it is HEREBY  
2 RECOMMENDED that the action be dismissed with prejudice pursuant to Federal Rule  
3 of Civil Procedure 41(a)(2).

4 These Findings and Recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
6 fourteen (14) days after being served with these Findings and Recommendations, any  
7 party may file written objections with the Court and serve a copy on all parties. Such a  
8 document should be captioned "Objections to Magistrate Judge's Findings and  
9 Recommendations." Any reply to the objections shall be served and filed within fourteen  
10 (14) days after service of the objections. The parties are advised that failure to file  
11 objections within the specified time may result in the waiver of rights on appeal.  
12 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
13 F.2d 1391, 1394 (9th Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: April 13, 2015

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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