

1 transport to Corcoran State Prison for the evidentiary hearing is too disruptive to him and will
2 cause a major inconvenience. Thus, Plaintiff requests dismissal of this action, cancellation of the
3 May 10, 2018 evidentiary hearing, and cancellation of the transport order. (Id.)

4 Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “ ‘a plaintiff has an
5 absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a
6 motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193
7 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.
8 1997)). Here, Defendants have filed a motion for summary judgment, so Plaintiff cannot
9 voluntarily dismiss this action pursuant to Rule 41(a)(1)(A)(i).

10 Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an
11 action without a court order by filing a stipulation of dismissal signed by all parties who have
12 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Therefore, Plaintiff may dismiss this action by filing a
13 stipulation of dismissal that is signed by all parties who have appeared.

14 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
15 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is
16 addressed to the sound discretion of the district court. Hamilton v. Fireston Tire & Rubber Co.
17 Inc., 679 F.2d 143, 145 (9th Cir. 1982).

18 Here, it is unclear whether Plaintiff intended to file a motion for voluntary dismissal of
19 this action, and whether the requested dismissal is with or without prejudice. Therefore, the
20 Court finds it appropriate to require the parties to meet and confer regarding Plaintiff’s filing.

21 Based on the foregoing, it is **HEREBY ORDERED** as follows:

- 22 1. The parties **SHALL** meet and confer regarding Plaintiff’s notice of voluntary dismissal,
23 (ECF No. 144);
- 24 2. Prior to the meet and confer, Defendants are **DIRECTED** to serve a courtesy copy of this
25 order on Plaintiff via the Litigation Coordinator at the institution where he is currently
26 housed;

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- 1 3. On or before **Friday, April 13, 2018**, Defendants are DIRECTED to file:
- 2 a. A response to the notice;
- 3 b. A stipulation to dismiss this action pursuant to Federal Rule of Civil Procedure
- 4 41(a)(1)(A)(ii), specifying whether the dismissal is with or without prejudice; **or**
- 5 c. If the parties do not intend to seek dismissal of this action, a statement setting forth
- 6 the witnesses and documents Defendants intend to present at the evidentiary
- 7 hearing, pursuant to the Court's March 22, 2018 order;
- 8 4. Plaintiff is DIRECTED to file a confirmation of his intent to dismiss this action, with
- 9 prejudice, on or before **Friday, April 20, 2018**; Plaintiff is relieved of this obligation if
- 10 Plaintiff executes the above stipulation , and
- 11 5. Plaintiff's transport for the scheduled evidentiary hearing is stayed pending confirmation
- 12 of the parties' intent.

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14 IT IS SO ORDERED.

15 Dated: April 9, 2018

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE

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