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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM L. SNOW,
Plaintiff,
v.
DOCTOR SHWE,
Defendant.

No. 1:15-cv-01606-DAD-SAB (PC)

ORDER GRANTING PLAINTIFF'S
REQUEST TO VOLUNTARILY DISMISS THE
ACTION

(Doc. Nos. 42, 44)

Plaintiff William L. Snow is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. Nos. 4 and 10.) On December 22, 2016, defendant Shwe filed an answer to the complaint. (Doc. No. 36.) On February 27, 2017, plaintiff filed a motion to voluntarily dismiss this action without prejudice. (Doc. No. 42.) On March 3, 2017, defendant Shwe filed a statement of non-opposition to plaintiff's notice of voluntary dismissal noting that defendant "has not incurred any costs of suit nor has defendant filed any counter claim against Plaintiff." (Doc. No. 44 at 1.)

Federal Rule of Civil Procedure 41(a)(2) provides that after an answer or motion for summary judgment has been filed, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Because defendant has filed an answer, plaintiff cannot automatically dismiss the action through the filing of a notice of voluntary dismissal. Fed. R. Civ. P. 41(a)(1)(A)(i).

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Although defendant did not oppose plaintiff's motion for voluntary dismissal, a stipulation was not filed and therefore a court order is necessary to dismiss this action. Accordingly, based on the lack of objection by defendant, plaintiff's motion for voluntarily dismiss (Doc. No. 42) is granted, and the action is dismissed, without prejudice.

IT IS SO ORDERED.

Dated: March 20, 2017


UNITED STATES DISTRICT JUDGE