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7	UNITED STATES DISTRICT COURT	
8	EASTERN DISTRICT OF CALIFORNIA	
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10	EDWARD FURNACE,	Case No. 1:16-cv-00420-NONE-BAM (PC)
11	Plaintiff,	ORDER DIRECTING DEFENDANT TO
12	v.	RESPOND TO PLAINTIFF'S MOTION TO DISMISS ACTION
13	VILLA,	(ECF No. 68)
14	Defendant.	SEVEN (7) DAY DEADLINE
15		
16	Plaintiff Edward Furnace ("Plaintiff") is a state prisoner proceeding pro se and in forma	
17	pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on	
18	Plaintiff's second amended complaint against Defendant Villa for excessive force in violation of	
19	the Eighth Amendment.	
20	This action is now ready to be set for a jury trial and is set for a telephonic status	
21	conference on November 10, 2021 at 10:00 a.m. to discuss setting the relevant deadlines and a	
22	possible trial date. (ECF No. 65.)	
23	Currently before the Court is Plaintiff's Motion to Dismiss Action, filed October 25, 2021.	
24	(ECF No. 68.) Plaintiff states that he stipulates to dismiss this action pursuant to Fed. R. Civ. P.	
25	41(a)(1). (<i>Id.</i>)	
26	Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, " 'a plaintiff has an	
27	absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a	
28	motion for summary judgment.' " Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193	

1	F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.	
2	1997)). Here, Defendant has filed an answer, so Plaintiff cannot voluntarily dismiss this action	
3	pursuant to Rule 41(a)(1)(A)(i).	
4	Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a "plaintiff may dismiss an	
5	action without a court order by filing a stipulation of dismissal signed by all parties who have	
6	appeared." Fed. R. Civ. P. 41(a)(1)(A)(ii). Therefore, Plaintiff may dismiss this action by filing a	
7	stipulation of dismissal that is signed by all parties who have appeared. However, the motion	
8	filed by Plaintiff includes only Plaintiff's signature.	
9	A party may also dismiss an action by filing a motion requesting the Court to dismiss the	
10	action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is	
11	addressed to the sound discretion of the district court. Hamilton v. Fireston Tire & Rubber Co.	
12	Inc., 679 F.2d 143, 145 (9th Cir. 1982).	
13	The Court finds that Plaintiff is attempting to file a motion to dismiss this action pursuant	
14	to Rule 41(a)(2). Therefore, Defendant is directed to file an opposition or statement of non-	
15	opposition to the motion. Alternatively, Defendant may obtain a stipulation of dismissal that is	
16	signed by all parties appearing in this action.	
17	Accordingly, within seven (7) days from the date of service of this order, Defendant is	
18	DIRECTED to file either:	
19	1. An opposition or statement of non-opposition to Plaintiff's motion to dismiss this action;	
20	or	
21	2. A stipulation to dismiss this action pursuant to Federal Rule of Civil Procedure	
22	41(a)(1)(A)(ii), signed by all parties appearing in this action.	
23	IT IS SO ORDERED.	
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25	Dated: October 26, 2021 /s/ Bashara A. McAuliffe	
26	UNITED STATES MAGISTRATE JUDGE	
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