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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5

6 **R.R. a minor by and through his guardian**
7 **ad litem Debra Ruiz, et al.,**

8 **Plaintiff,**

9 **v.**

10 **COUNTY OF TULARE, et al.,**

11 **Defendant.**

CASE NO. 1:16-CV-0570 AWI SKO

ORDER DISMISSING DEFENDANT
CITY OF VISALIA

(Doc. No. 21)

12
13 On August 9, 2016, Plaintiffs and Defendant the City of Visalia filed a stipulated dismissal
14 of the City of Visalia only. See Doc. No. 21. Although other defendants have filled answers, no
15 other defendant signed the stipulation. To date, no other defendant has responded or objected to
16 the August 9 stipulation.

17 Federal Rule of Civil Procedure 41(a) “allows plaintiffs voluntarily to dismiss some or all
18 of their claims against some or all defendants.” Romoland Sch. Dist. v. Inland Empire Energy
19 Ctr., LLC, 548 F.3d 738, 748 (9th Cir. 2008). Where a defendant has served an answer, but has
20 not signed a stipulation to dismiss, a plaintiff’s voluntary dismissal of an “action” must be effected
21 through Federal Rule of Civil Procedure 41(a)(2). See Fed. R. Civ. Pro. 41(a); Wilson v. City of
22 San Jose, 111 F.3d 688, 692 (9th Cir. 1999); Local 2-1971 of PACE Intl. Union v. Cooper, 364
23 F.Supp.2d 546, 551 (W.D. N.C. 2005); Sullivan b. Bankhead Enterprises, Inc., 108 F.R.D. 378,
24 382 (D. Mass. 1985). Rule 41(a)(2) provides in pertinent part: “Except as provided in Rule
25 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that
26 the court considers proper.” Fed. R. Civ. Pro. 41(a)(2). “A district court should grant a motion for
27 voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain
28 legal prejudice as a result.” Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001).

1 Here, this case is in the early stages of litigation. No other defendant has objected or
2 responded to the stipulated dismissal of the City of Visalia. Given the time that has now passed,
3 the Court will view stipulation as being unopposed. So viewing the stipulation, there is no reason
4 apparent to deny the stipulated dismissal. See Fed. R. Civ. Pro. 41(a)(2); Smith, 263 F.3d at 975.
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6 Accordingly, IT IS HEREBY ORDERED that pursuant to Rule 41(a)(2), Defendant the
7 City of Visalia is DISMISSED from this action.

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9 IT IS SO ORDERED.

10 Dated: August 17, 2016



SENIOR DISTRICT JUDGE