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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DELBERT J. SMITH,)	Case No.: 1:16-cv-01267-LJO-SAB (PC)
)	
Plaintiff,)	ORDER REGARDING MOTION TO
)	WITHDRAW DEMAND FOR JURY TRIAL AND
v.)	CONTINUE TO TRIAL BY ASSIGNED JUDGE
)	IN THIS CIVIL CASE
C. HERNANDEZ, et al.,)	
)	(ECF No. 60)
Defendants.)	
)	
)	

Plaintiff Delbert J. Smith is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On April 3, 2018, Plaintiff filed a motion to withdraw his demand for a jury trial from his petition, stating that he submits to a trial by judge in this matter. (ECF No. 60.)

Federal Rule of Civil Procedure 38(b) provides that “[o]n any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and (2) filing the demand in accordance with Rule 5(d).” Rule 38(d) states that “[a] proper demand may be withdrawn only if the parties consent.”

Rule 39(a) provides that once a jury demand has been made, “[t]he trial on all issues so demanded must be by jury unless . . . the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record,” or “the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.” “Because the right to a jury trial is a fundamental right guaranteed to our citizenry by the Constitution, . . . courts should indulge every reasonable

1 presumption against waiver.” SEC v. Jensen, 835 F.3d 1100, 1107 (9th Cir. 2016) (quoting Solis v.
2 County of Los Angeles, 514 F.3d 946, 955 (9th Cir. 2008)).

3 In this case, Defendants demanded a jury trial on all claims in this action in their answer to
4 Plaintiff’s complaint, filed on January 31, 2017. (ECF No. 16.) The answer was filed and served on
5 Plaintiff. (*Id.* at 5.) Thus, currently the demand for a trial by jury has not been withdrawn by all
6 parties. No further action need be taken regarding Plaintiff’s motion. The parties are not precluded
7 from stipulating to a nonjury trial.

8 For these reasons, Plaintiff’s motion to withdraw demand for jury trial and proceed to a trial by
9 judge is **HEREBY DENIED**, without prejudice.

10
11 IT IS SO ORDERED.

12 Dated: April 4, 2018



UNITED STATES MAGISTRATE JUDGE