

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS K. MILLS,  
Plaintiff,  
v.  
Z. JONES, et al.,  
Defendants.

Case No. 1:21-cv-01193-ADA-HBK (PC)  
ORDER DENYING MOTIONS WITHOUT  
PREJUDICE IN LIGHT OF RULE 41(a)(2)  
PENDING MOTION  
ORDER DIRECTING CLERK TO STRIKE  
LODGED AMENDED COMPLAINT  
(Doc. Nos. 164, 165, 166)

On January 17, 2023, Plaintiff filed a motion to compel discovery and motion to enter letter from Attorney General’s Office. (Doc. No. 164-65). Plaintiff also lodged a proposed amended complaint on the same date. (Doc. No. 166). On November 22, 2022, Plaintiff filed a motion stating he wishes to dismiss the entire action *without prejudice*. (Doc. No. 159, emphasis added), which the Court construed as a motion for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2). (Doc. No. 162 at 2).<sup>1</sup> On December 1, 2022, Defendants filed a non-opposition to the

---

<sup>1</sup> Defendants filed a motion for summary judgment noting Plaintiff had initiated the action before exhausting his administrative remedies. (Doc. No. 151). Presumably, Plaintiff acknowledging he prematurely filed the action, sought a dismissal without prejudice so he may file a new action after he fully exhausted his administrative remedies.

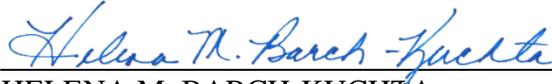
1 Rule 41(a)(2) motion. (Doc. No. 163). Due to Plaintiff's withdrawal of consent (Doc. No. 160,  
2 162), Plaintiff's Rule 41(a)(2) motion (Doc. No. 159) remains pending before the district court.

3 Plaintiff's filings of the instant motions are unclear considering his pending motion to  
4 voluntarily dismiss this case. Thus, the Court will deny Plaintiff's motions without prejudice  
5 pending the district court's ruling on Plaintiff's pending Rule 41(b) motion to dismiss. If the  
6 district court denies Plaintiffs' Rule 41(a)(2) motion, Plaintiff may refile the motions, if  
7 appropriate. Further, the undersigned has previously issued a Report and Recommendation to  
8 deny Plaintiff's previous motion to file a second amended complaint (Doc. No. 154). Again,  
9 should the district court deny the Rule 41(a)(2) motion, the district court will first have to rule on  
10 Plaintiff's previous motion to file a second amended complaint before Plaintiff may lodge a new  
11 complaint. Thus, the Court will direct the Clerk to strike the lodged amended complaint.

12 ACCORDINGLY, it is ORDERED:

- 13 1. Plaintiff's motion to compel discovery (Doc. No. 164) and motion to enter letter from  
14 Attorney General's Office (Doc. No. 165) are DENIED without prejudice.
- 15 2. The Clerk of Court shall strike Plaintiff's lodged amended complaint (Doc. No. 166).

16  
17 Dated: January 19, 2023

18   
19 HELENA M. BARCH-KUCHTA  
20 UNITED STATES MAGISTRATE JUDGE  
21  
22  
23  
24  
25  
26  
27  
28