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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SEQUOYAH DESERTHAWK
KIDWELL,

Plaintiff,

v.

JASON COLLINS, et al.,

Defendants.

Case No.: 1:22-cv-00709-JLT-CDB (PC)

**ORDER REGARDING PLAINTIFF'S
FILING OF JANUARY 8, 2024 AND
DIRECTING DEFENDANT'S RESPONSE**

(Doc. 33)

SEVEN (7) DAY DEADLINE

Plaintiff Sequoyah Deserthawk Kidwell, *also known as* Jason Scott Harper, is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The action proceeds against Defendant Aguwa for retaliation in violation of the First Amendment.

On December 26, 2023, Defendant filed an answer to Plaintiff's first amended complaint. (Doc. 31.)

On January 8, 2024, Plaintiff filed a document titled "Plaintiffs Response to Answer Plainti[ff] Conce[des] and Request Dismissal of Complaint." (Doc. 33.)

DISCUSSION AND ORDER

The Court construes Plaintiff's filing to be a motion for voluntary dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

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1 Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “a plaintiff has an
2 absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a
3 motion for summary judgment.” *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193
4 F.3d 1074, 1077 (9th Cir. 1999) (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir.
5 1997)). Here, Defendant has filed an answer, so Plaintiff cannot voluntarily dismiss this action
6 pursuant to Rule 41(a)(1)(A)(i). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a
7 “plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed
8 by all parties who have appeared.” Therefore, Plaintiff may dismiss this action by filing a
9 stipulation of dismissal that is signed by all parties who have appeared. However, the motion filed
10 by Plaintiff includes only Plaintiff’s signature.

11 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
12 action. Fed. R. Civ. P. 41(a)(2). That rule provides, in relevant part, that “an action may be
13 dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.”
14 *Id.* A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of
15 the district court. *Hamilton v. Firestone Tire & Rubber Co. Inc.*, 679 F.2d 143, 145 (9th Cir.
16 1982).

17 As noted above, the Court finds that Plaintiff is attempting to file a motion to dismiss this
18 action pursuant to Rule 41(a)(2). Therefore, Defendant will be directed to file an opposition or
19 statement of non-opposition to the motion. Alternatively, Defendant may obtain a stipulation of
20 dismissal that is signed by all parties appearing in this action.

21 Accordingly, **within seven (7) days** from the date of service of this order, Defendant is
22 **DIRECTED** to file either: (1) an opposition or statement of non-opposition to Plaintiff’s motion
23 to dismiss this action; or (2) a stipulation to dismiss this action pursuant to Federal Rule of Civil
24 Procedure 41(a)(1)(A)(ii), signed by all parties appearing in this action.

25 IT IS SO ORDERED.

26 Dated: January 10, 2024

27 
28 UNITED STATES MAGISTRATE JUDGE