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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAKA SENEGAL MUHAMMAD,

Plaintiff,

No. 2:09-cv-0582 KJN P

vs.

D. K. SISTO, et al.,

Defendants.

ORDER

Plaintiff has filed a motion, pursuant to Federal Rule of Civil Procedure 41(a)(2), to withdraw his complaint and close this action. Plaintiff states that he is about to be released from prison and no longer wishes to pursue this litigation. Also pending before the court are defendants’ motions to dismiss the complaint and to declare plaintiff a vexatious litigant.

Once defendants have appeared in an action, the action may be dismissed at plaintiff’s request only by court order. Fed. R. Civ. P. 41(a)(2). “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result.” Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001) (citing Waller v. Fin. Corp. of Am., 828 F.2d 579, 583 (9th Cir. 1987) (fn. omitted).

Defendants shall file, within seven days, a statement whether they would be prejudiced by dismissal of this action, and by the dismissal of defendants’ pending motions as

1 moot; any averment of prejudice must be specific to defendants herein and to this litigation.

2 SO ORDERED.

3 DATED: June 15, 2011

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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