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6
 7 UNITED STATES DISTRICT COURT FOR THE
 8 EASTERN DISTRICT OF CALIFORNIA
 9 SACRAMENTO DIVISION

10	SHAKEEL AHMED,)	No. 2-12-cv-2131 JAM KJN
11	Plaintiff)	
12	v.)	
13)	
14	BIGGS, <i>et al.</i> ,)	PLAINTIFF’S MOTION FOR VOLUNTARY
15	Defendants.)	DISMISSAL
16)	

17 Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff requests that his complaint currently pending
18 before the Court be dismissed with prejudice. Plaintiff agrees to bear all of his own costs and
19 attorney’s fees.

20 Federal Rule of Civil Procedure 41(a)(2) provides:

21 [A]n action shall not be dismissed at the plaintiff's instance save upon order of
 22 the court and upon such terms and conditions as the court deems proper. If a
 23 counterclaim has been pleaded by a defendant prior to the service upon the
 24 defendant of the plaintiff's motion to dismiss, the action shall not be dismissed
 against the defendant's objection unless the counterclaim can remain pending
 for independent adjudication by the court. Unless otherwise specified in the
 order, a dismissal under this paragraph is without prejudice.

25 Fed. R. Civ. P. 41(a)(2). Under this rule, if the defendant has answered or filed a dispositive motion,
 26 a plaintiff may not dismiss an action except by court order and under such terms and conditions as
 27 the court deems proper. The decision whether to grant the motion rests within the discretion of the
 28 court. Sams v. Beech Aircraft Corp., 625 F.2d 273, 277 (9th Cir. 1980). “A district court should

1 grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will
2 suffer some plain legal prejudice as a result.” Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001)
3 (citations omitted). The Ninth Circuit has defined legal prejudice as “just that-prejudice to some
4 legal interest, some legal claim, some legal argument.” Westlands Water Dist. v. United States, 100
5 F.3d 94, 97 (9th Cir. 1996). “[T]he expense incurred in defending against a lawsuit does not amount
6 to legal prejudice.” Id.

7 Here, Defendants have not filed cross claim alleging the existence of any legal claim.
8 Therefore, Defendants would not suffer any legal prejudice if Plaintiff’s motion for voluntary
9 dismissal is granted.

10 WHEREFORE, Plaintiff prays that this Court grant his motion for voluntarily dismissal.

11 Dated: February 21, 2013

Respectfully submitted,

LAW OFFICE OF ROBERT JOBE

/s/ Robert B. Jobe

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ORDER

It is hereby ordered that Plaintiff's motion for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2) be GRANTED.

It is so ordered - 2/21/2013

/s/ John A. Mendez

Hon. John A. Mendez
United States District Court Judge