

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

REGINALD WHEELER,
Plaintiff,
v.
M HODGES, et al.,
Defendants.

No. 2:13-cv-2526 MCE KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, requested that this action be dismissed. On September 6, 2016, defendants were ordered to notify the court whether they objected to the dismissal of this action. On September 13, 2016, defendants responded that they do not object to the dismissal of the action, but based on the time and effort expended in defending this matter, asked the court to exercise its discretion and dismiss the action with prejudice.

Rule 41(a)(2) provides:

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Fed. R. Civ. P. 41(a)(2). Rule 41 vests the district court with discretion to dismiss an action at the plaintiff's instance "upon such terms and conditions as the court deems proper." Hargis v. Foster, 312 F.3d 404, 412 (9th Cir. 2002)


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

The undersigned reviewed plaintiff's request, as well as the record in this 2013 case. In addition to the time and effort defendants expended in defending this case, the court has similarly expended significant time and effort, including the issuance of an 18 page ruling on defendants' motion for summary judgment, recommending that the motion be granted. Therefore, the court finds that it is proper to dismiss this action with prejudice.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to voluntarily dismiss this action (ECF No. 57) is granted; and
2. This action is dismissed with prejudice.

Dated: September 14, 2016


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

/whee2526.59