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

GENE PLYLEY,

Plaintiff,

v.

MARLENE L. GRANGAARD, individually
and as trustee of the MARLENE L.
GRANGAARD REVOCABLE LIVING
TRUST, dba CLAM BEACH INN, aka
CLAM DIGGER BAR,

Defendants.

No. C 12-05825 WHA

**ORDER TO SHOW CAUSE AS
TO REQUEST FOR DISMISSAL**

In this action asserting claims under the Americans with Disabilities Act and state law, defendants have filed a motion for summary judgment. In response, plaintiff’s attorney Jason Singleton states the following (Dkt. No. 41) (emphasis added):

INTRODUCTION: Plaintiff is now terminally ill and is not expected to survive long. Plaintiff’s counsel pointed this out to Defense counsel, and offered to dismiss the matter. A dismissal after an [a]nswer is filed requires agreement by both parties. Defendant refused.


OFFER OF STIPULATION: Plaintiff stipulates that due to his current health condition he is unlikely to ever leave his apartment, much less travel to Defendant’s Clam Digger Bar. As a result, there is no possibility of future injury, therefore no standing, and the federal claim is moot. *Plaintiff requests the Court thus dismiss the federal claim, and not extend supplemental jurisdiction over the state claim.*

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Under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), it would appear that both sides could stipulate to dismissal without a court order, notwithstanding plaintiff's representation that defendants refused such a stipulation. Defendants are thus **ORDERED TO SHOW CAUSE** as to why this case should not be dismissed under Rule 41(a)(2). Defendants' response to this order is due by **5 PM ON FEBRUARY 18, 2014**.

IT IS SO ORDERED.

Dated: February 12, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE