UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SAM DRAKE,

Plaintiff,

v.

MCCOMAS, *et al.*,

Defendants.

Case No. 1:22-cv-01149-JLT-BAM (PC)

ORDER DIRECTING DEFENDANTS TO RESPOND TO PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF DEFENDANT ENRIQUEZ

(ECF No. 61)

SEVEN (7) DAY DEADLINE

Plaintiff Sam Drake ("Plaintiff") is a pretrial detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's second amended complaint on the following claims: (1) violation of the First Amendment based on a facial challenge to Fresno County Jail ("FCJ") Policy #E-120 and #E-410 against Defendants Mims, McComas, and Zanoni; (2) violation of the First Amendment based on an as-applied challenge to FCJ Policy #E-120 and #E-410 against Defendants Enriquez, Keoniyom, Nichols, and Snyder; and (3) violation of Due Process for returning Plaintiff's mail against Defendants Enriquez, Keoniyom, Nichols, and Snyder.

On June 4, 2025, Plaintiff filed a request for voluntary dismissal of certain party and claims pursuant to Federal Rule of Civil Procedure 41. (ECF No. 61.) Plaintiff states that he voluntarily dismisses, with prejudice, Defendant Patricia Enriquez and all First and Fourteenth Amendment claims against Defendant Enriquez. Plaintiff requests that the Court remove

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Defendant Enriquez's name from the caption as though no action had been brought against her, and states that the dismissal under Rule 41 should be effective immediately. (*Id.*)

"[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the district court lacks jurisdiction to do anything about it." *Id.* at 1078.

Federal Rule of Civil Procedure 41(a)(1)(A)(ii) further provides that a "plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A)(ii).

A party may also dismiss an action by filing a motion requesting the Court to dismiss the action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the district court. *Hamilton v. Firestone Tire & Rubber Co. Inc.*, 679 F.2d 143, 145 (9th Cir. 1982).

As Defendants have already filed an answer and Plaintiff's motion for voluntary dismissal of Defendant Enriquez includes only his signature, Plaintiff may not dismiss Defendant Enriquez pursuant to Rule 41(a)(1). Therefore, Defendants are directed to file an opposition or statement of non-opposition to Plaintiff's motion for voluntary dismissal of Defendant Enriquez, with prejudice, pursuant to Rule 41(a)(2). Alternatively, Defendants may obtain a stipulation of dismissal of Defendant Enriquez, with prejudice, that is signed by all parties appearing in this action, pursuant to Rule 41(a)(1)(A)(ii).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Within **seven (7) days** from the date of service of this order, Defendants are DIRECTED to file either:
    a. An opposition or statement of non-opposition to Plaintiff's motion for voluntary dismissal of Defendant Enriquez pursuant to Rule 41(a)(2); or

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b. A stipulation to dismiss Defendant Enriquez, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), signed by all parties appearing in this action.

IT IS SO ORDERED.

Dated: **June 4, 2025**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE