

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Drake v. McComas

Drake · No. 1:22-cv-01149-JLT-BAM (PC) · Decided June 5, 2025

SUMMARY

The United States District Court for the Eastern District of California directed defendants to respond within seven days to Plaintiff Sam Drake’s motion for voluntary dismissal of Defendant Patricia Enriquez with prejudice. The court held that dismissal could not proceed under Federal Rule of Civil Procedure 41(a)(1) because defendants had answered and the motion was signed only by the plaintiff, and it identified Rule 41(a)(2) or a signed stipulation under Rule 41(a)(1)(A)(ii) as alternatives.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 5, 2025
DOCKET	1:22-cv-01149-JLT-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for voluntary dismissal with prejudice of Defendant Patricia Enriquez and all First and Fourteenth Amendment claims against her. The court ordered Defendants to file an opposition or statement of non-opposition under Federal Rule of Civil Procedure 41(a)(2), or alternatively to obtain and file a stipulation signed by all appearing parties under Rule 41(a)(1)(A)(ii).
STANDARD OF REVIEW	A motion for voluntary dismissal under Federal Rule of Civil Procedure 41(a)(2) is reviewed under the sound discretion of the district court.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order

TOPICS

- civil procedure
- motions to dismiss
- section 1983
- first amendment
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff could unilaterally dismiss Defendant Enriquez under Federal Rule of Civil Procedure 41(a)(1) after Defendants had filed an answer.
2. What procedural mechanism was available for Plaintiff's requested voluntary dismissal.

HOLDINGS

1. Plaintiff could not unilaterally dismiss Defendant Enriquez under Rule 41(a)(1) because Defendants had already filed an answer and Plaintiff's filing was not a stipulation signed by all parties who had appeared.
2. Plaintiff's requested dismissal could proceed through a motion under Rule 41(a)(2), subject to the court's discretion, or through a stipulation of dismissal signed by all parties who had appeared under Rule 41(a)(1)(A)(ii).

KEY QUOTATIONS

“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).” (1)

FACTUAL BACKGROUND

Plaintiff Sam Drake is a pretrial detainee proceeding pro se and in forma pauperis in a civil rights action concerning Fresno County Jail policies and the return of his mail. He sought to dismiss Defendant Patricia Enriquez with prejudice and remove her from the caption. Because Defendants had already filed an answer and Drake's request bore only his signature, the court required a response under Rule 41(a)(2) or a stipulation signed by all appearing parties.

PROCEDURAL HISTORY

Drake, a pretrial detainee proceeding pro se and in forma pauperis, brought a 42 U.S.C. § 1983 action based on First Amendment challenges to Fresno County Jail policies and a Due Process claim concerning returned mail. After Defendants filed an answer, Drake filed a unilateral request for voluntary dismissal of Defendant Enriquez. The court concluded that unilateral dismissal under Rule 41(a)(1) was unavailable because an answer had been filed, and directed Defendants to respond within seven days or obtain a qualifying stipulation.

DISPOSITION

other

CASES CITED

- Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077-78 (9th Cir. 1999)

- Hamilton v. Firestone Tire & Rubber Co. Inc., 679 F.2d 143, 145 (9th Cir. 1982)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 SAM DRAKE, Case No. 1:22-cv-01149-JLT-BAM (PC) 12 Plaintiff,
ORDER DIRECTING DEFENDANTS TO RESPOND TO PLAINTIFF’S MOTION FOR 13 v.
VOLUNTARY DISMISSAL OF DEFENDANT ENRIQUEZ 14 MCCOMAS, et al., (ECF No. 61)
15 Defendants. SEVEN (7) DAY DEADLINE 16 17 Plaintiff Sam Drake (“Plaintiff”) is a pretrial
detainee proceeding pro se and in forma 18 pauperis in this civil rights action pursuant to 42
U.S.C. § 1983.

This action proceeds on 19 Plaintiff’s second amended complaint on the following claims: (1)
violation of the First 20 Amendment based on a facial challenge to Fresno County Jail (“FCJ”) Policy #E-120 and #E-410 21 against Defendants Mims, McComas, and Zanon; (2) violation of
the First Amendment based on 22 an as-applied challenge to FCJ Policy #E-120 and #E-410
against Defendants Enriquez, 23 Keoniyom, Nichols, and Snyder; and (3) violation of Due Process
for returning Plaintiff’s mail 24 against Defendants Enriquez, Keoniyom, Nichols, and Snyder.

25 On June 4, 2025, Plaintiff filed a request for voluntary dismissal of certain party and 26 claims
pursuant to Federal Rule of Civil Procedure 41. (ECF No. 61.) Plaintiff states that he 27
voluntarily dismisses, with prejudice, Defendant Patricia Enriquez and all First and Fourteenth 28
Amendment claims against Defendant Enriquez. Plaintiff requests that the Court remove 1
Defendant Enriquez’s name from the caption as though no action had been brought against her, 2
and states that the dismissal under Rule 41 should be effective immediately.

(Id.) 3 “[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action
4 prior to service by the defendant of an answer or a motion for summary judgment.” Commercial
5 Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and 6
citation omitted). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is 7
required, the parties are left as though no action had been brought, the defendant can’t complain, 8
and the district court lacks jurisdiction to do anything about it.” Id. at 1078.

9 Federal Rule of Civil Procedure 41(a)(1)(A)(ii) further provides that a “plaintiff may 10 dismiss
an action without a court order by filing a stipulation of dismissal signed by all parties 11 who
have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). 12 A party may also dismiss an action by filing a
motion requesting the Court to dismiss the 13 action. Fed. R. Civ.

P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is 14 addressed to the sound
discretion of the district court. Hamilton v. Firestone Tire & Rubber Co. 15 Inc., 679 F.2d 143, 145
(9th Cir. 1982). 16 As Defendants have already filed an answer and Plaintiff’s motion for

voluntary dismissal 17 of Defendant Enriquez includes only his signature, Plaintiff may not dismiss Defendant Enriquez 18 pursuant to Rule 41(a)(1).

Therefore, Defendants are directed to file an opposition or statement 19 of non-opposition to Plaintiff's motion for voluntary dismissal of Defendant Enriquez, with 20 prejudice, pursuant to Rule 41(a)(2). Alternatively, Defendants may obtain a stipulation of 21 dismissal of Defendant Enriquez, with prejudice, that is signed by all parties appearing in this 22 action, pursuant to Rule 41(a)(1)(A)(ii).

23 Accordingly, IT IS HEREBY ORDERED as follows: 24 1. Within seven (7) days from the date of service of this order, Defendants are DIRECTED 25 to file either: 26 a. An opposition or statement of non-opposition to Plaintiff's motion for voluntary 27 dismissal of Defendant Enriquez pursuant to Rule 41(a)(2); or 28 /// 1 b. A stipulation to dismiss Defendant Enriquez, with prejudice, pursuant to Federal 2 Rule of Civil Procedure 41(a)(1)(A)(ii), signed by all parties appearing in this 3 action.

4 IT IS SO ORDERED. 5 6 Dated: June 4, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28