

**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

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**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 Zanoni; (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