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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KAREEM STANSBURY,	CASE NO. 1:09-cv-00549-SKO PC
Plaintiff,	ORDER REQUIRING DEFENDANTS TO FILE OPPOSITION OR STATEMENT OF NON- OPPOSITION TO PLAINTIFF’S MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE
v.	
UNITED STATES GOVERNMENT, et al.,	(Doc. 59)
Defendants.	FIFTEEN DAY DEADLINE

Plaintiff Kareem Stansbury, a former federal prisoner proceeding pro se and in forma pauperis, filed this civil action on March 24, 2009, pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. This action is proceeding on Plaintiff’s second amended complaint, filed on February 28, 2011, against Defendant Lehman for excessive force in violation of the Eighth Amendment, and against Defendant Miller for retaliation in violation of the First Amendment. Plaintiff’s claims arise from events which occurred in 2008 while he was incarcerated at United States Penitentiary-Atwater (USP-Atwater) in Atwater, California.

Pursuant to the scheduling order filed on May 14, 2012, the deadline for filing pretrial dispositive motions is March 25, 2013. On February 28, 2013, Plaintiff filed a motion seeking voluntary dismissal of this action, without prejudice.

At this juncture in the proceedings, dismissal must be pursuant to stipulation between the parties or a court order and at this late stage, dismissal is generally with prejudice. Fed. R. Civ. P. 41(a). However, it is certainly within Defendants discretion to agree to a dismissal without prejudice.

1 Accordingly, the Court HEREBY ORDERS as follows:

- 2 1. Within **fifteen (15) days** from the date of service of this order, Defendants shall file
3 an opposition or a statement of non-opposition to Plaintiff's motion;
- 4 2. If Defendants oppose a dismissal without prejudice, Plaintiff is required to file a
5 reply notifying the Court of his position on a dismissal with prejudice within **fifteen**
6 **(15) days** from the date of service of the opposition; and
- 7 3. In the interest of avoiding any further unnecessary expenditure of government
8 resources, the motion deadline is vacated pending resolution of this issue.

9
10 IT IS SO ORDERED.

11 **Dated: March 1, 2013**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE