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

MICHAEL ANTHONY LEWIS,

Petitioner,

No. 2:04-cv-1136 JAM EFB P

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Respondents.

ORDER

_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner moves to dismiss this action. Dckt. No. 27. Subject to exceptions not applicable here, a petitioner may voluntarily dismiss an action without a court order by filing:

- (I) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared.

Fed. R. Civ. P. 41(a)(1)(A)(I), (ii). Before petitioner moved to dismiss his case, respondents filed an answer to the petition. Dckt. No. 20. Therefore, this action cannot be dismissed pursuant to Rule 41(a)(1)(A)(I). However, respondents may choose to stipulate to dismissal

1 without prejudice pursuant to Rule 41(a)(1)(A)(ii). Should respondents decline to stipulate as
2 such, the court may dismiss this action based on petitioner's request, "on terms that the court
3 considers proper." Fed. R. Civ. P. 41(a)(2).

4 Accordingly, it is ORDERED that within 14 days of the date of this order, respondents
5 may file and serve a document stipulating to dismissal of this action without prejudice pursuant
6 to Rule 41(a)(1)(A)(ii). In the event respondents so stipulate, the court will construe the parties'
7 filings as a stipulation of dismissal without prejudice pursuant to Rule 41(a)(1)(A)(ii).

8 Dated: May 14, 2013.

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10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE
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