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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANTHON BUN,  
  
                                Plaintiff,  
  
                                v.  
  
PERRY, et al.,  
  
                                Defendants.

No. 2:09-cv-631-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, against defendants Perry, Hook, Lower, Handshumacker, Ramsey, Sanchez, Essman, Kirkland, Kissinger, Garate, and Aurich. He has filed a notice of voluntary dismissal pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. ECF No. 137.

Subject to exceptions not applicable here, a plaintiff may voluntarily dismiss an action without prejudice, and 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). Before plaintiff filed the notice of voluntary dismissal, defendants filed an answer. ECF No. 51. Therefore, this action cannot be dismissed pursuant to Rule 41(a)(1)(A)(i). However, defendants may choose to stipulate to dismissal without prejudice

1 pursuant to Rule 41(a)(1)(A)(ii). Should defendants decline to stipulate as such, the court may  
2 dismiss this action based upon plaintiff's request, "on terms that the court considers proper." Fed.  
3 R. Civ. P. 41(a)(2).

4 Accordingly, it is ORDERED that no later than Wednesday, September 17, 2014,  
5 defendants shall file and serve a document stipulating to dismissal of this action without prejudice  
6 pursuant to Rule 41(a)(1)(A)(ii),<sup>1</sup> or otherwise respond to plaintiff's motion to dismiss.

7 DATED: September 11, 2014.

8   
9 EDMUND F. BRENNAN  
10 UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> In the event defendants so stipulate, the court will construe the parties' filings as stipulation of dismissal for voluntary dismissal without prejudice pursuant to Rule 41(a)(1)(A)(ii).