

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

MORRIS MESTER,

Plaintiff,

No. CIV S-10-2105 LKK EFB P

vs.

KELSO, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Plaintiff has filed a notice of voluntary dismissal. Dckt. No. 57. 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 to the complaint. Dckt. 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 pursuant to Rule 41(a)(1)(A)(ii). Should defendants decline to stipulate as

1 such, the court may dismiss the action based on plaintiff's request, "on terms that the court  
2 considers proper." Fed. R. Civ. P. 41(a)(2).

3 Accordingly, it is ORDERED that within 15 days of the date of this order, defendants  
4 may file and serve a document stipulating to dismissal of this action without prejudice pursuant  
5 to Rule 41(a)(1)(A)(ii). In the event defendants so stipulate, the court will construe the parties'  
6 filings as stipulation of dismissal for voluntary dismissal without prejudice pursuant to Rule  
7 41(a)(1)(A)(ii).

8 DATED: February 28, 2011.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE