

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

TERRY GIBSON,

Plaintiff,

No. CIV S-10-2404 EFB P

vs.

HAWKINS, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Currently pending is a document filed on July 19, 2011, in which plaintiff requests that this action be dismissed. As explained below, the court construes this as a notice of voluntary dismissal and provides the opportunity for defendants to stipulate to dismissal without prejudice.

The Federal Rules of Civil Procedure govern voluntary dismissal. *See* Fed. R. Civ. P. 41(a). Subject to exceptions not applicable here, a plaintiff 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.

1 Fed. R. Civ. P. 41(a)(1)(A).

2 On January 21, 2011, the defendants filed an answer to the complaint. Thereafter, the
3 court issued a discovery and scheduling order. On July 19, 2011, plaintiff filed a notice of
4 voluntary dismissal. However, since defendants have answered, plaintiff cannot voluntarily
5 dismiss it without the defendants' consent. Thus, the defendants must have an opportunity to
6 consent to the dismissal.

7 Accordingly, it is ORDERED that within 14 days of the date of this order, defendants
8 may file and serve a document consenting to dismissal of this action without prejudice pursuant
9 to Rule 41(a)(1)(A)(ii). Should defendants file their consent, the court will construe the consent
10 and the instant filing together as a stipulation for voluntary dismissal without prejudice pursuant
11 to Rule 41(a)(1)(A)(ii).

12 DATED: July 25, 2011.

13 
14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26