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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH B. GIBBS,

Plaintiff,

v.

J.R. BRADFORD, et al.,

Defendants.

No. 2:16-cv-0544-MCE-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, against defendants Advincula, Bradford, Cross, and Waddle. He has filed a notice of voluntary dismissal pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. ECF No. 32.

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.

Fed. R. Civ. P. 41(a)(1)(A). Before plaintiff filed the notice of voluntary dismissal, defendants filed an answer. ECF No. 27. Therefore, this action cannot be dismissed pursuant to Rule 41(a)(1)(A)(i). However, defendants may stipulate to dismissal pursuant to Rule 41(a)(1)(A)(ii).

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

3 Accordingly, it is ORDERED that defendants shall have seven days to file and serve a
4 stipulation to the dismissal of this action pursuant to Rule 41(a)(1)(A)(ii),¹ or to otherwise
5 respond to plaintiff's motion to dismiss.

6 DATED: October 29, 2019.



7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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27 _____
28 ¹ In the event defendants so stipulate, the court will construe the parties' filings as a
stipulation for voluntary dismissal pursuant to Rule 41(a)(1)(A)(ii).