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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES CATO,
Plaintiff,
v.
M. DURST, *et al.*,
Defendants.

No. 2:17-cv-01873-TLN-JDP (PC)
ORDER DIRECTING DEFENDANTS TO
FILE A RESPONSE TO PLAINTIFF'S
REQUESTS FOR VOLUNTARY DISMISSAL
ECF Nos. 61, 62

Plaintiff has filed two requests to voluntarily dismiss this action. ECF Nos. 61, 62. 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 his request for voluntary dismissal, defendants filed an answer to the first amended complaint, ECF No. 30, and a motion for summary judgment, ECF No. 37. Consequently, plaintiff may not unilaterally dismiss this case pursuant to Rule 41(a)(1)(A)(i). However, defendants may stipulate to dismissal of this action pursuant to Rule 41(a)(1)(A)(ii).

1 Even if 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).

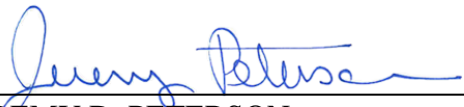
3 Accordingly, it is ORDERED that defendants shall, within fourteen days of the date of
4 this order, file and serve a document stipulating to dismissal of this action without prejudice
5 pursuant to Rule 41(a)(1)(A)(ii),¹ or otherwise respond to plaintiff's requests for voluntary
6 dismissal.

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8 IT IS SO ORDERED.

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10 Dated: December 1, 2020



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

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