

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
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Kevin Collins,

No. C 07-01532 JW

Plaintiffs,

**ORDER OF DISMISSAL PURSUANT TO
FED. R. CIV. P. 41(b)**

v.

Federal Express, et al.,

Defendants.

This case was scheduled for a Preliminary Pretrial Conference on October 20, 2008. Pursuant to the Court's Scheduling Order, the parties were to file a Joint Preliminary Pretrial Statement on or before October 10, 2008 but failed to do so. (See Docket Item No. 24.) On its own motion, the Court contacted the parties and was informed by Mr. David Wilson, counsel for Defendant Federal Express, that above-entitled matter had reached a settlement as of February, 2008.

In light of Mr. Wilson's representation, the Court issued an Order to Show Cause re: Settlement. (See Docket Item No. 27.) The Court vacated all trial and pretrial dates and required the parties to file the necessary stipulated dismissal pursuant to Federal Rule of Civil Procedure 41(a) on or before November 7, 2008, or in the alternative, to file a joint statement in response to the Order to Show Cause. To date the parties have failed to file either the stipulated dismissal or a response to the Court's order.


The Court once again contacted the parties and was informed by Mr. Wilson that the settlement proceeds have been paid and that Plaintiff's counsel had agreed to file the stipulated

1 dismissal. Plaintiff's counsel has failed to do so and has failed to otherwise communicate with the
2 Court. Notably, in its October 25 Order, the Court warned the parties that failure to comply with
3 any part of that Order will be deemed sufficient grounds to dismiss this action.

4 In light of the parties' failure to comply with the Court's October 25, 2008 Order, the Court
5 ORDERS this action dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b).

6 Each party shall bear their own fees and costs. The Clerk shall close this file.

7
8 Dated: November 12, 2008



JAMES WARE
United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 David Sidney Wilson dswilson@fedex.com
3 Waukeen Quandrigo McCoy mccoyslawsf@yahoo.com
4 Angela Alioto, murlene@randlelawoffices.com

5 **Dated: November 12, 2008**

Richard W. Wieking, Clerk

6 **By: /s/ JW Chambers**
7 **Elizabeth Garcia**
8 **Courtroom Deputy**

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28