

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 13-cv-01384-RM-BNB

JEREMY PINSON,

Plaintiff,

v.

KASDON,

Defendant.

ORDER

This matter arises on the plaintiff's **Consolidated Motion to Dismiss** [Doc. #114, filed 03/27/2014] (attached).

The Consolidated Motion to Dismiss states that the plaintiff seeks to dismiss Civil Action Nos. 13-cv-00749-RM-BNB; 13-cv-01384-RM-BNB; 13-cv-01567-BNB; 13-cv-02681-BNB; 14-cv00285-BNB; and 14-cv00645-BNB. Mr. Pinson claims that the requested dismissals are "pursuant to an informal agreement with Executive Staff at ADX Florence with who [sic] plaintiff agreed to voluntarily dismiss the above cases during a discussion with ADX Warden David Berkebile on March 12, 2014."

Rule 41, Fed. R. Civ. P., allows for the voluntary dismissal of an action as follows:

(a) Voluntary Dismissal.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may 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.

* * *

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

The defendant answered the complaint on November 13, 2013 [Doc. # 59].

Consequently, Mr. Pinson cannot voluntarily dismiss this action by a notice under Rule 41(a)(1)(A)(i). Instead, the dismissal must be by stipulation signed by Mr. Pinson and the defendant under Rule 41(a)(1)(A)(ii), or by court order under Rule 41(a)(2), neither of which are presented.

Mr. Pinson is incarcerated by the Federal Bureau of Prisons ("BOP") at the United States Penitentiary-Administrative Maximum in Florence, Colorado ("ADX"). He is an abusive filer and is well-known to the court. Mr. Pinson's abusive filing behavior is addressed in detail in a separate recommendation to impose filing restrictions on him [Doc. #111]. In view of Mr. Pinson's abusive filing history, which includes lying to the court, Warden Berkebile (or his designee) is directed to file a statement informing the court whether an agreement to dismiss the above-listed cases was reached as stated in Mr. Pinson's Consolidated Motion to Dismiss and the terms of the agreement.

In the meantime, the parties are cautioned that this action has not been dismissed and that Mr. Pinson's Consolidated Motion to Dismiss does not affect any filing deadlines and, particularly, does not affect the 14 day deadlines within which objections are due to the pending recommendations [Doc. ## 111 and 112].

IT IS ORDERED:

(1) Warden Berkebile (or his designee) shall file, on or before April 11, 2014, a statement informing the court of whether an agreement to dismiss the above-listed cases was reached, as stated in Mr. Pinson's Consolidated Motion to Dismiss, and the terms of any such agreement; and

(2) Counsel for the defendants is directed to cause a copy of this order to be served on Warden Berkebile by United States mail, first class postage prepaid.

Dated March 31, 2014.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

United States District Court
District of Colorado

In re Jeremy Pinson

Case No's = 13-cv-1567

14-cv-645

14-cv-285

13-cv-2681

13-cv-1384

13-cv-749

FILED

UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 27 2014

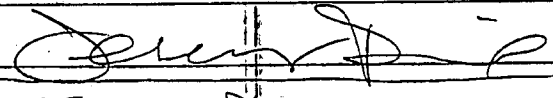
JEFFREY P. COLWELL
CLERK

Consolidated Motion to Dismiss

Comes now Jeremy Pinson, pursuant to Fed. R. Civ. P. 41 and seeks to dismiss all of the above-listed lawsuits pursuant to an informal agreement with Executive Staff at ADX Florence with who plaintiff agreed to voluntarily dismiss the above cases during a discussion with ADX warden David Berkebile on March 12, 2014.

3-21-14

Date



Jeremy Pinson