

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

EDDIE D. LEE (#102226)

VERSUS

CIVIL ACTION

LOUISIANA DEPARTMENT OF
CORRECTIONS, ET AL

NUMBER 09-327-JJB-SCR

ORDER

Before the court is the plaintiff's Motion to Voluntary Dismiss Without Prejudice. Record document number 20.

Pro se plaintiff, an inmate confined at Louisiana State Penitentiary, Angola, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against the Louisiana Department of Corrections, Sgt. T. Etheridge, Cadet D. Haney and Cadet Jedda. Plaintiff alleged that on May 30, 2008, the defendants failed to protect him from attack by a fellow inmate in violation of his constitutional rights. Plaintiff also alleged a negligence claim under state law. On October 5, 2009, the claims against the Louisiana Department of Corrections were dismissed.¹ Defendants Etheridge, Haney and Jedda have not been served with the complaint.

Plaintiff is now before the court seeking to dismiss his cases without prejudice pursuant to Rule 41, Fed.R.Civ.P. in order to pursue his claims in state court.

Rule 41(a) provides for the voluntary dismissal of actions at a plaintiff's request. The basic purpose of Rule 41(a)(2) is to

¹ Record document number 19.

freely permit the plaintiff, with court approval, to voluntarily dismiss an action so long as no other party will be prejudiced. *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2362 (3d d. 2008). A dismissal without prejudice should be granted unless the defendant will suffer some legal harm other than the mere prospect of a second lawsuit. *Holiday Queen Land Corp. v. Baker*, 489 F.2d 1031, 1032 (5th Cir. 1974).

It does not appear that any defendant will be prejudiced by a dismissal without prejudice.

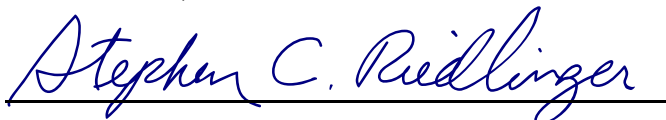
However, the plaintiff is placed on notice that should the state court later determine that his re-filed claims are prescribed under state law, then a dismissal without prejudice would effectively be a dismissal with prejudice.

Therefore;

IT IS ORDERED that within 15 days from the date of this order the plaintiff shall advise the court whether he desires to withdraw his Motion to Voluntary Dismiss Without Prejudice.

Failure to timely respond to this order shall result in the dismissal of the complaint without prejudice pursuant to Rule 41(a).

Baton Rouge, Louisiana, November 3, 2009.

A handwritten signature in blue ink that reads "Stephen C. Riedlinger". The signature is written in a cursive style and is positioned above a horizontal line.

STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE