

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BRYAN KEITH McDONALD,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-08-830-M
)	
DAVID MILLER, <i>et al.</i> ,)	
)	

Report and Recommendation

The Plaintiff filed a memorandum, asking the Court to stop the pleadings and stating that he declined to proceed further in this case. The Court conducted a telephone conference with Mr. McDonald and counsel of record for the Defendants, Ms. Margie Weaver, on February 17, 2009.¹ The purpose of the conference was to clarify the Plaintiff's intent. In the conference, Mr. McDonald stated during the telephone conference that he wished to dismiss the action without prejudice to refile. In light of the existence of a motion for summary judgment, the Court asked defense counsel whether she objected.² She said she did not and agreed that all parties should pay their own costs and attorney fees.

In light of the agreement of the parties, the Court should grant the Plaintiff's oral request for dismissal without prejudice.³

¹ A court reporter was present for the telephone conference and took a record of the discussion.

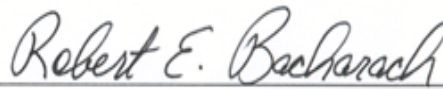
² *See* Fed. R. Civ. P. 41(a)(2).

³ *See* Fed. R. Civ. P. 41(a)(2).

The parties can object to the present report and recommendation. Any such objection must be filed with the Clerk of this Court by March 10, 2009.⁴ The failure to timely object would foreclose appellate review of the suggested ruling.⁵

The referral is terminated.

Entered this 18th day of February, 2009.



Robert E. Bacharach
United States Magistrate Judge

⁴ See W.D. Okla. Local Civil Rule 72.1.

⁵ See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); cf. *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).