

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

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JONATHAN P. COLE,

Plaintiff,

v.

JON E. LITSCHER;  
MICHAEL CATALANO;  
PRISON HEALTH SERVICES, INC.;  
PAM BARTELS;  
JOHN W. KUSSMAUL; D. ESSER;  
FUERSTENBURG; JANTZEN;  
TIM F. HAINES; SHIRLEY OLSON;  
KERRY MELBY; BECKY MANNING;  
and GERALD A. BERGE,

Defendants.

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ORDER

04-C-116-C

Plaintiff Jonathan P. Cole has moved for voluntary dismissal of this case. In his motion, he states that his reasons for dismissal are threefold: he has been disallowed the use of a legal book, his cell was searched and “all affidavit[s] dealing with 3 claims” were taken, and he has depleted his financial resources and can no longer obtain “supplies” to comply with court orders.

When a motion for voluntary dismissal is filed after the defendants have filed an

answer or motion for summary judgment such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendants.

If plaintiff is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn no later than November 29, 2004.

ORDER

IT IS ORDERED that plaintiff may have until November 29, 2004, in which to withdraw his motion for voluntary dismissal. If, by November 29, 2004, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 17th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge