

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

JOSE BORRERO,

Plaintiff,

v.

ROBERT BREVARD, BARBARA
RIPANI and ANN SEMROW,

Defendants.

ORDER

05-C-418-C

This is a civil action in which plaintiff contends that defendants violated his Eighth Amendment rights by refusing to respond to his serious dental health care needs. Defendant has answered the complaint and a preliminary pretrial conference has been held. Now plaintiff has written a letter dated February 23, 2006, which I construe as a motion for voluntary dismissal of the case.

When a motion for voluntary dismissal is filed after the defendant has 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 defendant has 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, unless defendants agree to a dismissal without prejudice as plaintiff asks. If defendants do not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendants may have until March 8, 2006, in which to advise plaintiff and the court whether they agree to a dismissal of this action without prejudice. If defendants agree to such a dismissal, the clerk of court is directed to enter a judgment of dismissal without prejudice. If defendants do not agree to such a dismissal, plaintiff may have until March 15, 2006, in which to withdraw his motion for voluntary dismissal. If, by March 15, 2006, 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 2nd day of March, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge