

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

DAVID LaFRANCHI,

Plaintiff,

v.

MICHAEL DITTMANN, GARY HAMBLIN,
CHAPLAIN MEJCHAR, SALLY WESS and
LT. TRINUD,

Defendants.

ORDER

11-cv-143-slc

Plaintiff David LaFranchi, an inmate at the Redgranite Correctional Institution, is proceeding on claims that defendants Michael Dittmann, Gary Hamblin, Chaplain Mejchar, Sally Wess and Lt. Trinud violated his rights under the First Amendment's free exercise clause and Religious Land Use and Institutionalized Persons Act by interfering with the practice and dietary needs of his Hebrew Israelite Messianic Natsarim faith. Now plaintiff has filed a motion to dismiss defendant Trinud and continue his lawsuit against the other defendants.

When a motion for dismissal is filed after a defendant has filed an answer, 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 Trinud has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal of this defendant only on the condition that the dismissal is with prejudice, which means that plaintiff will be barred from bringing his current claims against defendant Trinud in any future action, unless Trinud agrees to a dismissal without prejudice. If defendant Trinud does not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendant Trinud may have until January 18, 2012, in which to advise plaintiff and the court whether he agrees to dismissal of the claims against him without prejudice. If defendant Trinud does not agree to such a dismissal, plaintiff may have until January 25, 2012 in which to:

- (1) Withdraw his motion for dismissal of defendant Trinud or
- (2) advise the court that he has no objection to a dismissal of this defendant with prejudice.

If, by January 27, 2012, plaintiff fails to request withdrawal of his motion to dismiss defendant Trinud, defendant Trinud will be dismissed from this case with prejudice.

Entered this 11th day of January, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge