

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RANDY LYNN OWEN, #27167-078

VS.

UNITED STATES OF AMERICA

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**CIVIL ACTION NO. 4:19cv377
CRIMINAL ACTION NO. 4:17cr106(1)**

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Pro se Movant Randy Lynn Owen filed a response in this case (Dkt. #11) to the Report and Recommendation recommending dismissal. In it, Movant states that he does not object to the Court dismissing his case and that he “[withdraws] from any further argument,” noting that he is unable to pursue the case further. Movant’s response (Dkt. #11) is construed as a motion for voluntary dismissal. Dismissals by court order are governed by Federal Rule of Civil Procedure 41(a)(2) that provides, in pertinent part, “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” “Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.” Fed. R. Civ. P. 41(a)(2).

The decision to dismiss an action rests within the sound discretion of the trial court and may only be reversed for an abuse of that discretion.” *Schwarz v. Folloder*, 767 F.2d 125, 129 (5th Cir. 198). Generally, a motion for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the possibility of a second lawsuit. *United States ex rel. Doe v. Dow Chem. Co.*, 343 F.3d 325, 330 (5th Cir. 2003). The Court finds Respondent will not suffer plain legal prejudice from its dismissal and it is appropriate to dismiss the case pursuant to Movant’s construed motion for voluntary dismissal. *See Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002).

Accordingly, it is **ORDERED** that Movant's construed motion for voluntary dismissal (Dkt. #11) is **GRANTED**, and the case is **DISMISSED** without prejudice pursuant to Fed. R. Civ. P. 41(a)(2). For administrative and statistical purposes, all motions by any party not previously ruled upon are **DENIED**.

SIGNED this 27th day of August, 2021.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE