

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

|                        |   |                          |
|------------------------|---|--------------------------|
| DONALD SPOONER,        | ) |                          |
|                        | ) |                          |
| Plaintiff,             | ) |                          |
|                        | ) |                          |
| v.                     | ) | CASE NO. 1:17-CV-617-WKW |
|                        | ) | [WO]                     |
| GOLDEN PEANUT COMPANY, | ) |                          |
| LLC,                   | ) |                          |
|                        | ) |                          |
| Defendant.             | ) |                          |

**ORDER**

Before the court is Plaintiff’s notice of voluntary dismissal. (Doc. # 10.)

The notice does not comply with Rule 41(a)(1) of the Federal Rules of Civil Procedure because an answer has been filed.<sup>1</sup> *See* Fed. R. Civ. P. 41(a)(1) (allowing for Plaintiff’s unilateral notice of dismissal “before the opposing party serves either an answer or a motion for summary judgment”).

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<sup>1</sup> In addition, the motion does not contain a certificate of service in accordance with Rule 5(d) of the Federal Rules of Civil Procedure. However, the court finds that the lack of a certificate of service does not prejudice Defendant. Defendant was automatically served via email when the notice was docketed in the court’s electronic filing system. Delaying resolution of the case to correct the lack of a certificate of service only prolongs the burden on the court and Defendant of participating in a case Plaintiff clearly has no intention of pursuing. For example, Defendant is currently under an obligation to attempt to contact Plaintiff and to file a report of parties’ planning meeting on or before December 1, 2017. (Doc. # 8.) *See* Fed. R. Civ. P. 1 (stating that the Rules of Civil Procedure shall be “construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding”).

Accordingly, the court CONSTRUES Plaintiff's notice of voluntary dismissal (Doc. # 10) as a motion to dismiss pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. Further, it is ORDERED that the motion to dismiss (Doc. # 10) is GRANTED and that this action is DISMISSED without prejudice.

Final judgment will be entered separately.

DONE this 5th day of December, 2017.

/s/ W. Keith Watkins  
CHIEF UNITED STATES DISTRICT JUDGE