

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

LOUIS JENKINS, JR., #155 895,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:13-CV-501-TMH
)	[WO]
KIM THOMAS, as PRISON COMM.,)	
<i>et al.</i> ,)	
Defendants.)	

MEMORANDUM OPINION

On September 17, 2013 Plaintiff filed a motion to dismiss the complaint which the court considers a motion for voluntary dismissal without prejudice pursuant to Rule 41(a), *Federal Rules of Civil Procedure*. Upon consideration of Plaintiff's motion to dismiss, the court concludes that the motion should be granted. Furthermore, the court concludes that the dismissal of this case should be without prejudice. *See* Rule 41(a)(2), *Federal Rules of Civil Procedure*.

Dismissal without prejudice pursuant to Rule 41(a)(2), F.R.Civ.P., at the insistence of Plaintiff is committed to the sound discretion of this court, and absent some plain legal prejudice to Defendants, denial of the dismissal constitutes an abuse of this court's discretion. *McCants v. Ford Motor Company, Inc.*, 781 F.2d 855 (11th Cir. 1986). Simple litigation costs, inconvenience to Defendants, and the prospect of a second or subsequent lawsuit do not constitute clear legal prejudice. *Id.* *See also* *Durham v. Florida East Coast Railway Company*, 385 F.2d 366 (5th Cir. 1967).

The court has carefully reviewed the file in this case and determined that even if Defendants were given an opportunity to file a response to Plaintiff's motion to dismiss, they would not be able to demonstrate the existence of clear legal prejudice. Consequently, the court concludes that this case should be dismissed without prejudice on the motion of Plaintiff.

A separate Order follows

Done this 16th day of October, 2013.

/s/ Truman M. Hobbs
TRUMAN M. HOBBS
SENIOR UNITED STATES DISTRICT JUDGE