

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

CECIL JAMES MESSER, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:17cv08-MHT
)	[WO]
DAVID POTTS, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

Plaintiff has filed a motion for leave of court to file a motion to dismiss under Rule 41 of the Federal Rules of Civil Procedure, accompanied by a motion for voluntary dismissal of this action without prejudice pursuant to Fed.R.Civ.P. 41(a)(2). The court concludes these motions are due to be granted.

Dismissal without prejudice pursuant to Rule 41(a)(2) at the request of plaintiff is committed to the sound discretion of the district court, although in most cases a dismissal should be granted absent clear legal prejudice to defendants. *See McCants v. Ford Motor Company, Inc.*, 781 F.2d 855, 856-57 (11th Cir. 1986). Simple litigation costs, inconvenience to defendants, and the prospect of a second or subsequent lawsuit do not constitute clear legal prejudice. *See id.*; *see also Durham v. Florida East Coast Railway Company*, 385 F.2d 366, 368-69 (5th Cir. 1967).

The court has reviewed the file in this case and determined that defendants have not demonstrated the existence of clear legal prejudice. The court, therefore, concludes this action should be dismissed without prejudice.

Accordingly, it is ORDERED that:

(1) Plaintiff's motion for leave of court to file a motion to dismiss under Fed.R.Civ.P 41 (Doc. # 34) is granted.

(2) Plaintiff's motion for voluntary dismissal without prejudice pursuant to Fed.R.Civ.P. 41(a)(2) (Doc. #36) is granted.

(3) This action is dismissed in its entirety without prejudice under Federal Rule of Civil Procedure 41(a)(2).

The clerk of the court is DIRECTED to close this case.

DONE, this 9th day of May, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE