

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

JOSEPH TOWNSEND

PLAINTIFF

VS.

CASE NO. 13-CV-4006

AUTOZONE STORES INC.  
and RANDY MAGNESS

DEFENDANTS

**ORDER**

Before the Court Plaintiff's Motion for Voluntary Non-suit Without Prejudice. (ECF No. 26). Defendants have filed a response to the motion (ECF No. 27), and Plaintiff has filed a reply. (ECF No. 29). The Court finds this matter ripe for consideration.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff moves the Court to dismiss his claims against Defendants without prejudice. Defendants do not oppose the dismissal, but they argue that Plaintiff should be required to pay Defendants' costs for litigating this action if the dismissal is without prejudice.

Upon consideration, the Court finds that the Motion for Voluntary Non-suit Without Prejudice should be and hereby is **GRANTED**. Plaintiff's claims against Defendants are hereby **DISMISSED WITHOUT PREJUDICE**.

The Court also finds that an award of costs and attorneys fees to Defendants is not warranted. While some discovery has been conducted in this case, no substantive motions, such as motions to dismiss or motions for summary judgment, have been filed. Plaintiff states that he intends to re-file this case in state court without any adding any new claims. Plaintiff also states that he will stipulate to the discovery responses and disclosures in this case being used in any newly filed state case. In sum, it does not appear that Defendants will be forced to repeat work already done in this case or

incur duplicative litigation costs. Accordingly, the Court finds that Defendants will not be unduly prejudiced by the dismissal of this action without prejudice.

IT IS SO ORDERED, this 2nd day of October, 2014.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge