

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

SANTOS MENDOZA A/K/A SANTOS  
GERARDO MENDOZA CASTELLON

PLAINTIFF

v.

Case No. 4:16-cv-4030

SERGEANT WISE; OFFICER McCRNORER;  
LIEUTENANT HEATH ROSS; OFFICER  
JOHN DOE; SERGEANT MCADEN;  
and OFFICER JOHN DOE

DEFENDANTS

**ORDER**

This is a civil rights action filed by the Plaintiff, Santos Mendoza, pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff's Motion to Dismiss. (ECF No. 5).

Plaintiff filed his Complaint and Application to proceed *in forma pauperis* ("IFP") on April 11, 2016. (ECF Nos. 1, 2). That same day this Court entered an Order directing Plaintiff to provide additional information relating to his IPF Application by April 27, 2016. Plaintiff did not submit the information requested by the Court in connection with his IFP Application. Instead, Plaintiff filed a Motion to Dismiss his Complaint on April 29, 2016 stating "I Santos Mendoza would like to dismiss Case Number 4:16-cv-4030." (ECF No. 5). Service has not been issued in this case.

The Federal Rules of Civil Procedure provide an avenue for parties to voluntarily dismiss claims without prejudice. Specifically, a Plaintiff "may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. . . ." Fed. R. Civ. P. 41(a)(i). Voluntary dismissal under Rule 41(a)(1) is without prejudice unless the notice states otherwise or the plaintiff has previously dismissed an

action including the same claim in any other court. *Id.* In ordinary civil cases, a notice of dismissal that complies with this rule operates as a matter of right upon notice to the court, and permission of the court is not required. *Safeguard Business Sys., Inc. v. Hoeffel*, 907 F.2d 861, 863 (8th Cir. 1990).

The Court interprets Plaintiff's Motion to Dismiss as a Notice of Voluntary Dismissal. Defendants have not been served nor has an Answer been filed in this matter. Therefore, Plaintiff may voluntarily dismiss his case at this stage as a matter of right. *Safeguard*, 907 F.2d at 863.

Accordingly, Plaintiff's Complaint should be and hereby is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41 (a)(i).

**IT IS SO ORDERED**, this 20th day of May, 2016.

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