

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION

TROY HYCHE,  
Plaintiff,

v.

Case No. 5:08cv321/RH/EMT

SCOTT MIDDLEBROOKS, et al.,  
Defendants,

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**REPORT AND RECOMMENDATION**

This cause is before the court upon Plaintiff's "Motion to Dismiss Without Prejudice" (Doc. 64). Plaintiff requests that the court dismiss this action without prejudice because he is unprepared to proceed at this time (*see id.*). Defendants filed a response indicating no objection to dismissal of this action without prejudice (Doc. 63).

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, an action may be dismissed at the plaintiff's request "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Dismissal is without prejudice unless otherwise provided in the order. *See id.* The Eleventh Circuit has explained that

[t]he district court enjoys broad discretion in determining whether to allow a voluntary dismissal under Rule 41(a)(2). McCants v. Ford Motor Co., Inc., 781 F.2d 855, 857 (11th Cir. 1986). "[I]n most cases, a voluntary dismissal should be granted unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit, as a result." *Id.* at 856–57. "The crucial question to be determined is, [w]ould the defendant lose any substantial right by the dismissal." Durham v. Florida East Coast Ry. Co., 385 F.2d 366, 368 (5th Cir. 1967). In exercising its "broad equitable discretion under Rule 41(a)(2)," the district court must "weigh the relevant equities and do justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate." McCants, 781 F.2d at 857.

Pontenberg v. Boston Sci. Corp., 252 F.3d 1253, 1255 (11th Cir. 2001) (modifications added). Here, Defendants do not assert that they will lose any substantial right by the dismissal or otherwise suffer

clear legal prejudice; indeed, Defendants do not oppose dismissal without prejudice (*see* Doc. 63). Therefore, the court will grant Plaintiff's motion and dismiss this action without prejudice.

Accordingly, it is respectfully **RECOMMENDED**:

1. That Plaintiff's "Motion to Dismiss Without Prejudice" (Doc. 64) be **GRANTED**.
2. That this case be **DISMISSED without prejudice**.

At Pensacola, Florida this 26<sup>th</sup> day of February 2010.

*/s/ Elizabeth M. Timothy*

**ELIZABETH M. TIMOTHY**

**UNITED STATES MAGISTRATE JUDGE**

#### **NOTICE TO THE PARTIES**

**Objections to these proposed findings and recommendations may be filed within fourteen (14) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only. A copy of objections shall be served upon the magistrate judge and all other parties. Failure to object may limit the scope of appellate review of factual findings. *See* 28 U.S.C. § 636; United States v. Roberts, 858 F.2d 698, 701 (11th Cir. 1988).**