

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

TINEIMALO ADKINS, JR., FED.)	CIVIL 14-00156 LEK-KSC
REG. #95342-022,)	
)	
Plaintiff,)	
)	
vs.)	
)	
DAVID SHINN; STEVEN REISER;)	
CULLY STERNS; WILLIAM CLINE;)	
JOSEPH POTTS; ALAN URASAKI;)	
TREVOR LIDGE,)	
)	
Defendants.)	
)	

ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAWAL CIVIL ACTION

Before the Court is pro se Plaintiff Tineimalo Adkins, Jr.'s ("Plaintiff") "Motion to Withdrawal Civil Action" ("Plaintiff's Motion"), filed on January 7, 2015. [Dkt. no. 42.] The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai'i ("Local Rules").

On January 13, 2015, this Court issued an entering order ("1/13/15 EO") informing the parties that it was inclined to grant Plaintiff's Motion and to dismiss the case with prejudice, with the parties to bear their own costs and attorney's fees. [Dkt. no. 43.] The 1/13/15 EO also informed the parties that, if this Court grants Plaintiff's Motion, it would deny as moot William Cline, Alan Urasaki, and Trevor

Lidge's ("Defendants") pending Motion to Dismiss First Amended Complaint with Prejudice and/or for Summary Judgment as to All Claims ("Defendants' Motion"),¹ filed November 7, 2014. [Dkt. no. 36.] Defendants' Motion is currently set for hearing on February 9, 2015, at 9:45 a.m. Plaintiff's memorandum in opposition to Defendants' Motion was due on January 12, 2015, [EO, filed 12/5/14 (dkt. no. 41),] but Plaintiff did not file a response to Defendants' Motion.

On January 20, 2015, Defendants filed a response to the 1/13/15 EO. [Dkt. no. 44.] Defendants state that they do not object to the granting of Plaintiff's Motion, as long as this Court dismisses the action pursuant to the terms described in the 1/13/15 EO. Defendants emphasize that they oppose any dismissal of Plaintiff's action that is without prejudice.

Fed. R. Civ. P. 41(a)(2) states, in pertinent part:

¹ Plaintiff filed his original Complaint on March 25, 2014, and, on April 8, 2014, this Court issued a Deficiency Order that, *inter alia*, directed Plaintiff to file an amended complaint. [Dkt. nos. 1, 4.] Plaintiff filed his First Amended Complaint on May 6, 2014. [Dkt. no. 14.] In a June 16, 2014 order, this Court: 1) ruled that Plaintiff's claims against Defendants Cline, Urasaki, and Lidge state cognizable claims for relief; and 2) dismissed Plaintiff's claims against Defendants David Shinn, Steven Reiser, Cully Sterns, and Joseph Potts. [Dkt. no. 17.] Plaintiff filed a Second Amended Complaint on July 8, 2014. [Dkt. no. 18.] In a July 24, 2014 order, this Court dismissed the Second Amended Complaint and ruled that the operative pleading in this case is the portion of the First Amended Complaint alleging claims against Defendants Cline, Urasaki, and Lidge. [Dkt. no. 23.]

"Except as provided in Rule 41(a)(1),^[2] an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." This Court has reviewed both Plaintiff's Motion and Defendants' Motion, and this Court notes that Plaintiff had multiple opportunities to correct the deficiencies in his pleadings, and Plaintiff apparently filed his motion instead of responding to Defendants' Motion. This Court FINDS that, under the circumstances of this case, the dismissal of Plaintiff's action shall be with prejudice.

CONCLUSION

This Court therefore GRANTS Plaintiff's Motion to Withdrawal Civil Action, filed January 7, 2015. The remaining claims in Plaintiff's First Amended Complaint, filed May 6, 2014, are HEREBY DISMISSED WITH PREJUDICE, with the parties to bear their own costs and attorney's fees. In light of the ruling on Plaintiff's Motion, the hearing on Defendants' Motion to Dismiss First Amended Complaint with Prejudice and/or for Summary Judgment as to All Claims, filed November 7, 2014, is VACATED, and Defendants' Motion is HEREBY DENIED AS MOOT.

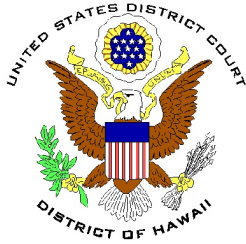
There being no remaining claims in this case, this Court DIRECTS the Clerk's Office to enter judgment in favor of

² Plaintiff cannot voluntarily dismiss his action without a court order, pursuant to Rule 41(a)(1)(A), because Defendants have already filed a motion for summary judgment, and the parties have not stipulated to a dismissal without a court order.

Defendants and to close the case on **February 17, 2015**, unless Plaintiff files a motion for reconsideration of this Order by **February 9, 2015**.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, January 23, 2015.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

TINEIMALO ADKINS, JR. VS. DAVID SHINN, ET AL; CIVIL 14-00156 LEK-KSC; ORDER GRANTING PLAINTIFF'S MOTION TO WITHDRAWAL CIVIL ACTION