

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

<b>JIMMY COOK, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>Cause No.1:09-cv-1567-WTL-TAB</b>
	)	
<b>COUNTRY VIEW FAMILY FARMS, LLC,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ENTRY ON MOTION TO DISMISS PLAINTIFF JIMMY COOK**

This cause is before the Court on Plaintiff Jimmy Cook’s Motion to Dismiss Without Prejudice (dkt. no. 68) and the Defendants’ response thereto. The motion has been under advisement while the Court waited for the Plaintiffs to make an appropriate showing regarding the citizenship of the parties in this case. *See* Docket Nos. 74 & 79 (taking motion under advisement). The Plaintiffs have now done so, *see* Plaintiffs’ Third Supplemental Jurisdictional Statement (Docket No. 91), and the Court is satisfied that it has subject matter jurisdiction over this case.

Turning to the motion to dismiss, Plaintiff Jimmy Cook seeks to voluntarily dismiss his claim without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) because “he is unable to proceed forward with the litigation due to his current economic and personal hardships.” The Defendants object, arguing that Cook “should be made to chose between (1) proceeding with this case, (2) dismissing his claims *with prejudice*, or (3) dismissing his claims *without prejudice* on the condition that he refrain from refileing his claims until this case has been finally resolved” in order to avoid “the unsavory and real potential for competing state and federal cases based on the same alleged ‘nuisance.’” Defendant’s Objection at 1, 3.

Undoubtedly the Defendants would prefer to be subject to one suit. However, the Court fails to see how the Defendants will suffer any actual prejudice if Cook's motion is granted. Other than objecting to the instant motion and tendering discovery requests—which presumably are identical to those tendered to the other plaintiffs in this case—it does not appear that the Defendants have expended any resources in this case that would not have been expended if Cook had never joined this suit. And if Cook had never joined this suit, he would have been free to file his own suit. Thus, the granting of Cook's motion will not put the Defendants in any worse position than they would have been in had Cook never been involved in this case, whereas imposing the conditions urged by the Defendants would put Cook in a worse position.

The Defendants' objections are overruled and Cook's motion is **GRANTED**. Plaintiff Jimmy Cook's claims in this case are hereby **DISMISSED WITHOUT PREJUDICE**. The parties shall hereafter conform the caption in this cause to reflect that Ralph Dalzell, Sr., is now the first named plaintiff.

SO ORDERED: 03/24/2011



Hon. William T. Lawrence, Judge  
United States District Court  
Southern District of Indiana

Copies to all counsel of record via electronic notification