

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RAYMOND BROWN,	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION NO. 3:16-1031
v.	:	(JUDGE MANNION)
	:	
CONNIE GREEN, <u>et al.</u>,	:	
	:	
Defendants	:	

MEMORANDUM

I. Background

Plaintiff, an inmate confined in the State Correctional Institution, Huntingdon (“SCI-Huntingdon”), Pennsylvania, filed this civil rights action pursuant to [42 U.S.C. §1983](#). (Doc. [1](#)). The named Defendants are the following correctional officers at SCI-Huntingdon: Connie Green; Superintendent Tice, Manager Ralston and Dorina Varner. *Id.* Plaintiff alleges that Defendants are deliberately indifferent to his health, by continually exposing him to tobacco smoke. *Id.*

On January 23, 2017, Defendants filed a motion for summary judgment on the issue of exhaustion. (Doc. [47](#)). On February 7, 2017, this Court issued an Order, affording Plaintiff the opportunity to file an opposition brief by April 7, 2017. (Doc. [55](#)). Plaintiff failed to file a brief in opposition, and instead, filed a

“Motion to Withdraw Civil Action 16-1031.” (Doc. [57](#)). On July 24, 2017, Plaintiff filed another “Motion to Close Civil Action 16-1031 with No Costs to Either Party.” (Doc. [59](#)). On August 7, 2017, Defendants filed an unopposed motion for dismissal of the above captioned action, provided the dismissal is pursuant to [Fed.R.Civ.P. 41\(a\)\(2\)](#). (See Doc. [60](#)).

For the reasons set forth below, the Court will grant the Plaintiff’s motions to dismiss the above captioned action. However, such dismissal will be pursuant to [Fed.R.Civ.P. 41\(a\)\(2\)](#).

II. Discussion

The pertinent portions of [Fed.R.Civ.P. 41\(a\)](#) are as follows:

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed, at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.... Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Fed.R.Civ.P. 41(a)(1),(2). Procedurally, Fed.R.Civ.P. 41(a)(1) is not available to Plaintiff because there has been both an answer (Doc. [37](#)) and summary judgment motion (Doc. [47](#)) filed. Consequently, his request for voluntary dismissal must be pursuant to Fed.R.Civ.P. 41(a)(2) and requires an order of court.

The Court will grant Plaintiff's motions and the case will be dismissed without prejudice. A separate Order will be issued.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Dated: August 28, 2017

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