

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

RAYMOND BROWN,

:

Plaintiff

:

v.

:

**CIVIL ACTION NO. 3:17-0323
(JUDGE MANNION)**

CONNIE GREEN, et al.,

:

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 August 14, 2017, Plaintiff filed a “Notice of Dismissal Request and Unopposed”, in which he seeks to withdraw the above captioned action. (Doc. [13](#)). Plaintiff’s request will be construed as a motion for voluntary dismissal pursuant to [Fed.R.Civ.P. 41\(a\)\(1\)](#), and will be granted.

II. Discussion

[Fed.R.Civ.P. 41\(a\)\(1\)](#) states in relevant part:

(a) Voluntary Dismissal

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the 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; or

(ii) a stipulation of dismissal signed by all parties who have appeared in the action.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claims, a notice of dismissal operates as an adjudication on the merits.

No answer or other responsive pleading has been filed in the above captioned action. Thus, Plaintiff is entitled to dismissal under [Fed.R.Civ.P. 41\(a\)\(1\),\(A\)](#). However, because Plaintiff has previously dismissed a prior action based on the same claims raised herein, see [Brown v. Green, et al, Civil No. 3:16-cv-1031 \(M.D. Pa. Aug 28, 2017\)](#) the dismissal of the above captioned action operates as an adjudication on the merits and the dismissal will be with prejudice pursuant to [Fed.R.Civ.P. 41\(a\)\(1\)\(B\)](#).

A separate Order will be issued.

sl Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Dated: August 28, 2017

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