

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE

SCOTT KUHNEN,	)	
	)	
Plaintiff	)	
	)	No. 3:17-0730
v.	)	Judge Trauger/Brown
	)	<b>Jury Demand</b>
DARREN REMINGTON; SUSAN GANN,	)	
	)	
Defendants	)	

**TO: THE HONORABLE ALETA A. TRAUGER**

**REPORT AND RECOMMENDATION**

Presently pending is a joint motion by the Plaintiff and Defendant Gann to dismiss all claims by the Plaintiff against her (Docket Entry 7).

No opposition to the motion has been filed by the remaining Defendant Remington. Accordingly, the Magistrate Judge recommends that the motion be granted and the claims against the Defendant Gann be dismissed with prejudice in accordance with the joint motion.

**LEGAL DISCUSSION**

Under Rule 41(a)(1) a plaintiff may dismiss a case without a court order before the opposing party serves either an answer or a motion for summary judgment, or with a stipulation of dismissal signed by all parties who have appeared. In this case since the Defendant Gann has appeared and has filed an affidavit agreeing to the dismissal, it appears that under either section of Rule 41(a)(1) a dismissal without court order would be appropriate.

Even if a court order is required it appears that there is no reason not to grant the dismissal with prejudice.

The remaining Defendant Remington was apparently served on June 7, 2017 (Docket Entry 6). However, he has not filed any appearance in this matter and may be subject to a motion for default by the Plaintiff. If the Plaintiff requests a default against Defendant Remington, he should comply with Rule 55 and accompany any such motion with an appropriate certificate showing that he has made reasonable efforts to ascertain that this Defendant is not in the armed services. Generally, a request to [https://scra.dmdc.osd.mil/single\\_record\\_xhtml](https://scra.dmdc.osd.mil/single_record_xhtml) will provide the necessary information about current military service.

#### **RECOMMENDATION**

For the reason stated above, the Magistrate Judge recommends that the motion for order of dismissal with prejudice (Docket Entry 71) be **granted**.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further

appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

**ENTER** this 26<sup>th</sup> day of July, 2017.

/s/ Joe B. Brown  
JOE B. BROWN  
United States Magistrate Judge