

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIM A. ETIENNE,

CASE NO. 21-cv-01429

Plaintiff,

ORDER

V.

UNITED STATES OF AMERICA,

Defendant.

On October 24, 2023, Plaintiff Kim Etienne moved to voluntarily dismiss his lawsuit against Defendant United States of America under Fed. R. Civ. P. 41(a)(1)(A). Dkt. No. 53. The Court could not, however, grant the relief requested on Etienne’s unilateral motion because the Government had already filed an answer. Dkt. No. 18; *see* Fed. R. Civ. P. 41(a)(1)(i). So the Court directed the Clerk to renote Etienne’s motion for November 10, 2023, meaning the Government’s response was due on November 6 and Etienne’s reply was due on November 10. *See* Dkt. No. 53; *see also* LCR 7(d)(3). Neither party filed additional papers in support of or opposition to Etienne’s motion for dismissal. *See* Dkt.

ORDER - 1

1 Because Etienne may no longer dismiss his case as a matter of right, and
2 because he does not present his motion as a stipulation, the Court construes his
3 request as a motion to dismiss under Rule 41(a)(2). “Rule 41(a)(2) permits the
4 voluntary dismissal [of a case] by court order at the request of the plaintiff, if the
5 court finds it proper.” *Langere v. Verizon Wireless Servs.*, LLC, 983 F.3d 1115, 1119
6 n.3 (9th Cir. 2020). So long as the defendant will not be prejudiced or unfairly
7 affected by dismissal, district courts should exercise their discretion to allow
8 dismissal. *Stevedoring Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 921 (9th
9 Cir. 1989). Dismissal under Rule 41(a)(2) does not require imposing attorneys’ fees
10 and costs. *Id.*

11 Etienne has concluded that he cannot proceed pro se with this medical
12 malpractice case and he wishes to dismiss his case. Dkt. No. 52 at 5. The
13 Government does not oppose dismissal. *See LCR 7(b)(2)* (“[I]f a party fails to file
14 papers in opposition to a motion, such failure may be considered by the court as an
15 admission that the motion has merit.”).

16 Accordingly, the Court GRANTS Etienne's motion under Fed. R. Civ. P.
17 41(a)(2), and his action is dismissed without prejudice. Each party is to bear its own
18 costs and fees. All other pending motions and case deadlines are STRICKEN as
19 moot.

20 Dated this 13th day of November 2023.



Jamal N. Whitehead
United States District Judge