## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

AKEEM MUSA,

Plaintiff,

ORDER

v.

KABUL, INC. and HAMED ZAFARI,

15-cv-804-jdp

Defendants.

Plaintiff Akeem Musa seeks unpaid wages from defendants. Defendant Kabul, Inc. is a corporation operating a restaurant in Madison, Wisconsin. Defendant Hamed Zafari is the owner of Kabul. Kabul is unrepresented. Zafari is pro se.<sup>1</sup>

Musa moves under Federal Rule of Civil Procedure 41(a)(2) to dismiss Zafari from the action without prejudice. Dkt. 20. Plaintiff's strategy is apparent: drop Zafari and the corporation Kabul is a sitting duck for default judgment.

Rule 41(a)(2) allows a plaintiff to dismiss "an action" on "terms that the court considers proper." In the Seventh Circuit, Rule 41(a) is not the proper procedural vehicle to drop a party from an action. As the Seventh Circuit has explained, "Rule 41(a) does not speak of dismissing one claim in a suit; it speaks of dismissing an action—which is to say, the whole case." *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015). Because Musa seeks dismissal of one party and not the entire action, I will deny Musa's motion. The proper procedural vehicle here is Rule 15(a), which would allow Musa to amend his complaint and

<sup>&</sup>lt;sup>1</sup> The court has advised Kabul numerous times since January 2016 that Kabul must retain counsel to appear in this case because Kabul is a corporation, and that failure to retain counsel can result in a default judgment against Kabul. Dkt. 6; Dkt. 8; Dkt. 16; Dkt. 18. Kabul is still unrepresented. The court held a pretrial conference on June 7, 2016, but neither defendant attended the conference.

drop a party. *Id.* at 858. Musa may file a proposed amended complaint and concurrently move for leave to amend his complaint.

## **ORDER**

IT IS ORDERED that plaintiff Akeem Musa's Rule 41(a)(2) motion, Dkt. 20, is DENIED.

Entered September 9, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON District Judge