

Plaintiffs Motion for Reconsideration of Court's Order of Dismissal filed April 13, 2009 (Doc. #28). Having considered the motions, responses, and replies, the Court is of the opinion that the motions should be granted for the following reasons.

Plaintiff, who is *pro se*, seeks reconsideration of the Court's March 17, 2009, dismissing his claims against Defendants Litowsky and Wilkison after Plaintiff failed to respond to said Defendants' motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff contends that he failed to respond timely to the motions to dismiss because he was unfamiliar with the Federal Rules of Civil Procedure when his suit was removed from state court to this Court by Defendants. Having been unable to obtain counsel and noting his unfamiliarity with the federal-court system, Plaintiff moves to reinstate his claims against Defendants Litowsky and Wilkinson and to dismiss **all** his claims and causes of action against all Defendants without prejudice. Defendants oppose reconsideration and dismissal, arguing that dismissal without prejudice will allow Plaintiff to file a new cause of action in state court, subjecting Defendants to additional expense.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), an action may be dismissed at the plaintiff's request "upon order of the court and upon such terms and conditions as the court deems proper". FED.R. CIV.P. 41(a)(2). Dismissal is without prejudice, unless the Court's order states otherwise. *See id.* "[A]s a general rule, motions for voluntary dismissal should be freely granted unless the nonmoving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit." *Elbaor v. Tripathi/maging,nc.*, 279 F.3d 314, 317 (5th Cir. 2002) (emphasis added). The district court is not required to provide reasons for granting a plaintiff's Rule 41(a)(2) motion. *See Robles v. Atlantic Sanding Co.*, WL 22316862 (5th Cir. 2003) (summary calendar).

Defendants request that if Plaintiffs claims are dismissed, that such dismissal be with prejudice. The Fifth Circuit has held that dismissals with prejudice are "reserved for the most egregious of cases, usually cases where the requisite factors of clear delay and ineffective lesser sanctions are bolstered by the presence of at least one of the aggravating factors." *Rogers v. Kroger Co.*, 669 F.2d 317,320 (Sth Cir. 1982). These aggravating factors include: "(1) delay resulting from intentional conduct, (2) delay caused by the plaintiff personally, and (3) delay causing prejudice to the defendant." *Boudwin v. Graystone Ins. Co.*, 756 F.2d 399, 401 (Sth Cir. 1985)(citing *Morris v. Ocean Systems, Inc.*, 730 F.2d 248 (Sth Cir. 1984), In this case, the Court does not find a record of delay or intentional conduct by the Plaintiff. Therefore, the Court finds that dismissal with prejudice is not warranted.


IT IS THEREFORE ORDERED that Plaintiff's letter to the Court dated March 21,2009, and filed March 23,2009, which the Court construes as a Motion for Reconsideration of the Court's Order of March 17, 2009 dismissing Plaintiffs claims against Defendants Garry Wilkinson and Linda Litowsky (Doc. #10) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs Motion to Dismiss the instant action without prejudice filed March 25, 2009 (Doc. #18) is **GRANTED**. Plaintiffs claims and causes of action asserted against all Defendants are **DISMISSED WITH PREJUDICE**

IT IS FINALLY ORDERED that all further pending motions are **DISMISSED**.

A Final Judgment shall be rendered subsequently.

SIGNED this ~ day of June, 2009.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

