

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MICHAEL R. MCNEIL,

Plaintiff,

v.

Case No: 6:24-cv-1796-JSS-DCI

JIMMY R FREEMAN, NANCY J
FREEMAN TR, and CORNERSTONE
FOODS LLC,

Defendants.

_____ /

ORDER

On December 9, 2024, Plaintiff filed a Notice of Voluntary Dismissal with Prejudice Solely as to Defendants Jimmy R Freeman and Nancy J. Freeman TR. (Notice, Dkt. 30.) Because this document is styled a notice rather than a motion, the court presumes that Plaintiff is attempting to voluntarily dismiss this action as to the named Defendants under Federal Rule of Civil Procedure 41(a)(1). However, Rule 41(a)(1) only allows a plaintiff to dismiss an action by notice either “before the opposing party serves either an answer or a motion for summary judgment,” or by “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). Upon review of the docket, Defendants Jimmy R Freeman and Nancy J. Freeman TR have filed an answer, (Dkt. 24), and the Notice is signed only by Plaintiff, (*see* Dkt. 30). Accordingly, the Notice is ineffective under Rule 41(a)(1).

The court construes the Notice as a motion to dismiss this case as against Jimmy R Freeman and Nancy J. Freeman TR under Rule 41(a)(2), which provides for dismissal upon court order “on terms that the court considers proper.” *See Sanchez v. Discount Rock & Sand, Inc.*, 84 F.4th 1283, 1292 (11th Cir. 2023) (“Rule 41(a)(2), by its plain language, doesn’t require a motion . . . [a]nd, several times, we’ve approved dismissal orders that treated Rule 41(a)(1)(A) notices and stipulations as requests for a Rule 41(a)(2) court order.”). The court finds that the terms Plaintiff seeks in the Notice, dismissal of all claims against Jimmy R Freeman and Nancy J. Freeman TR with prejudice, to be proper.

Accordingly, Plaintiff’s construed motion to dismiss all claims against Defendants Jimmy R Freeman and Nancy J. Freeman TR under Rule 41(a)(2) (Dkt. 30) is **GRANTED**. The claims against Defendants Jimmy R Freeman and Nancy J. Freeman TR are **DISMISSED with prejudice**.

ORDERED in Orlando, Florida, on December 10, 2024.



JULIE S. SNEED
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record