

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SAWARIMEDIA LLC,
DEBORAH PARKER, JUDY
KELLOGG and PAUL ELY,

Plaintiffs,

v.

Case No. 4:20-CV-11246
Hon. Matthew F. Leitman
Mag. J. Michael J. Hluchaniuk

GRETCHEN WHITMER, Governor of
Michigan, JOCELYN BENSON,
Secretary of State of Michigan and
JONATHAN BRATER, Director of the
Michigan Bureau of Elections, in their
official capacities,

Defendants.

**PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL UNDER FEDERAL
RULE OF CIVIL PROCEDURE 41(a)(1)(A)(i)**

Now comes Plaintiff SawariMedia LLC by counsel, and now come *pro se* Plaintiffs Parker, Kellogg and Ely who have authorized undersigned counsel for limited purposes to present this notice also on their behalf, to provide notice under Federal Rule of Civil Procedure 41(a)(1)(A)(i) of their voluntary dismissal of this present action, without prejudice.

It has become evident to the Plaintiffs that the circumstances have changed, that the State Defendants will insist upon heavily litigating this case at every level,

and that the case will not settle on any basis that would offer Plaintiffs a realistic chance to get their initiative on the 2020 ballot. It seems that Plaintiffs' resources and efforts could better be directed elsewhere.

As of the filing of this notice on July 23, 2020, Defendants have not served Plaintiffs with either an answer or a motion for summary judgment.

Rule 41(a)(1)(A)(i) "provides for dismissal of an action upon the unilateral filing of a notice of dismissal with the Clerk of Court and without the necessity of further agreement by any other party or further order of the court." *D.C. Elecs., Inc. v. Narton Corp.*, 511 F.2d 294, 296 (6th Cir. 1975). Rule 41(a)(1)(A)(i) allows Plaintiffs to dismiss the action simply by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i).

This Court is familiar with Rule 41(a)(1)(A)(i). *See Carmack v. City of Detroit*, 2019 WL 316496, at *1 (E.D. Mich. Jan. 24, 2019) (Leitman, J.) (finding Plaintiff entitled to dismissal even after hearings on motions to dismiss where Defendants had not filed an answer or a motion for summary judgment). Under Sixth Circuit precedent, Defendants' failure to serve Plaintiffs with either an answer or motion for summary judgment is dispositive. *See Aamot v. Kassel*, 1 F.3d 441, 444 (6th Cir. 1993) (the rule "means what it says" and allows "no such case-by-case analysis of the amount of effort expended by the defendants Unless a defendant

has filed an answer or summary judgment motion, the governing provision is rule 41(a)(1)”) (quoting *Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977)); see *D.C. Elecs., Inc. v. Narton Corp.*, 511 F.2d 294, 296 (6th Cir. 1975) (“Although Rule 41 has been amended three times since 1948, it has not been broadened to include other motions or pleadings which would bar a dismissal by notice.”).

Rule 41(a)(1)(A)(i) explicitly requires an answer or a motion for summary judgment before requiring Plaintiffs to do anything more than give this simple notice of their voluntary dismissal without prejudice. Defendants failed to file an answer or motion for summary judgment. Plaintiffs are entitled to dismiss their cases and hereby do so without prejudice.

WHEREFORE, Plaintiffs SawariMedia LLC, Debra Parker, Judy Kellogg and Paul Ely respectfully give notice of their voluntary dismissal without prejudice of the present action.

Respectfully Submitted,

July 23, 2020

By: /s/ Saura J. Sahu
Saura J. Sahu (P69627)
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PROOF OF SERVICE

I hereby certify that on July 23, 2020, I caused the aforementioned and attached document to be electronically filed through the Court's electronic CM/ECF filing system, which will serve a copy and notice of filing on every attorney of record for Defendants. I also caused to be served via email the following parties:

Judy Kellogg, *In Pro Per*, judy_kellogg95@gmail.com
Deborah Parker, *In Pro Per*, alinosi@yahoo.com
Paul Ely, *In Pro Per*, tlc.rgeenyard@yahoo.com

I declare under the penalty of perjury that the above statements are true to the best of my knowledge, information, and belief.

Respectfully Submitted,

July 23, 2020

By: /s/ Saura J. Sahu
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