

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THU BANH and VI NGUYEN,

Case No. 1:17-cv-62

Plaintiffs,

Hon. Ray Kent

vs.

NEW ORLEANS CRISPY CHICKEN AND
CHILI DOGS, a Michigan Limited Liability Company,
and ANDREW KERN SANG VAN LE,
an individual,

Defendants.

ORDER

On October 30, 2018, the Court ordered plaintiffs to file a motion for entry of default judgment against defendant New Orleans Crispy Chicken and Chili Dogs, a Michigan Limited Liability Company, by no later than November 14, 2018, and advised plaintiffs that if they “fail to seek default judgment within that time frame, then New Orleans Crispy Chicken will be dismissed for lack of prosecution.” *See* Order (ECF No. 62). Plaintiffs responded to the order by filing a notice to voluntarily dismiss this defendant pursuant to Fed. R. Civ. P. 41(a)(1). *See* Notice (ECF No. 63). A voluntary dismissal without a court order under Rule 41(a)(1) is available if it is filed “before the opposing party serves either an answer or a motion for summary judgment.” *See* Fed. R. Civ. P. 41(a)(1)(i). Here, defendant New Orleans Crispy Chicken filed an answer (ECF No. 7). The default was entered at a later date because it failed to retain new counsel. For this reason, a court order is required under Fed. R. Civ. P. 41(a)(2) (“Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that

the court considers proper"). Accordingly, upon due consideration, plaintiffs' claims against defendant New Orleans Crispy Chicken and Chili Dogs, a Michigan Limited Liability Company, are **DISMISSED** without prejudice.

IT IS SO ORDERED.

Dated: November 26, 2018

/s/ Ray Kent
United States Magistrate Judge