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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Stephen Dorsey,  
Plaintiff,  
vs.  
Wright Medical Technology, Inc., a  
Delaware corporation; Wright Medical  
Group, Inc., a Delaware corporation,  
Defendants.

No. CV-09-8040-PCT-MHM

**ORDER**

The Court is in receipt of Defendants’ Motion to Alter or Amend Judgment (Doc. 29), filed shortly after the Court granted Plaintiff’s motion to dismiss the case without prejudice pursuant to Federal Rule of Civil Procedure 41(a) (Doc. 26). In essence, Defendants argue that the Court should have dismissed the case *with* prejudice, and that the Court should not have entered Judgment before allowing Defendants the chance to respond to Plaintiff’s motion to dismiss. (Doc. 29) However, Defendants’ motion does not set forth any analysis that would have altered the Court’s decision to dismiss the case without prejudice.

As Defendants note, a motion for voluntary dismissal under Rule 41(a)(2) is subject to the Court’s sound discretion. (Doc. 29 at 3, citing Stevedoring Services of America v. Armilla International B.V., 889 F.2d 919 (9th Cir. 1989) (explaining that “[a] motion for voluntary dismissal under Rule 41(a)(2) is addressed to the district court's sound discretion and the court's order will not be disturbed unless the court has abused its discretion.”). Defendants claim that Plaintiffs filed the motion to dismiss without prejudice in order to prevent

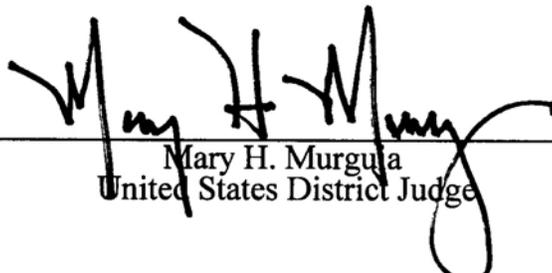
1 Defendants from filing a Motion for Sanctions and/or Motion for Summary Judgment based  
2 on Plaintiff's failure to identify expert opinion testimony to support the claims Plaintiff had  
3 identified in the Complaint. (Doc. 29 at 3). Defendants further state that they "believe that  
4 Plaintiff's request to dismiss his action, without prejudice, is nothing more than an attempt  
5 to put his past actions behind him in order to allow for the refile of his action without  
6 sanctions." (Doc. 29 at 2). However, Plaintiff's Complaint appears to concede that most,  
7 if not all, of his claims would now be barred by the Statute of Limitations if he were to refile  
8 his claims. (Doc. 1). Moreover, if Plaintiff attempts to refile his claims, Defendants are in  
9 no way barred from referencing this cases's history to the new Judge should Plaintiff fail to  
10 comply with the expert disclosure deadline in the hypothetical new case. A dismissal with  
11 prejudice would prevent Plaintiff from ever obtaining a decision on the merits, undermining  
12 the jurisprudential goal of deciding cases on their merits rather than on legal technicalities  
13 whenever possible. See Bailey v. U.S., 642 F.2d 344, 347 (9th Cir. 1981) ("Judges naturally  
14 prefer that a person claiming to be injured shall have a chance to have his claim heard and  
15 decided on its merits."). Given that Defendants have not presented a sufficient basis to alter  
16 or amend the Court's prior Order, Defendants' Motion to Alter or Amend Judgment (Doc.  
17 29) is hereby denied.

17 **Accordingly,**

18 **IT IS HEREBY ORDERED** denying Defendants' Motion to Alter or Amend Judgment  
19 (Doc. 29).

20 DATED this 2<sup>nd</sup> day of August, 2010.

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Mary H. Murgula  
United States District Judge