

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JEFF L. McELYEA

PLAINTIFF

VS.

NO. 4:08CV04204 JMM

**SHANE L. MCKEE, AS AGENT/EMPLOYEE
OF FITZGERALD'S TRUCKING, LLC,
AND FITZGERALD'S TRUCKING, LLC**

DEFENDANTS

ORDER GRANTING DISMISSAL WITHOUT PREJUDICE

Pending is Plaintiff's motion for voluntary dismissal without prejudice. (Docket # 16).

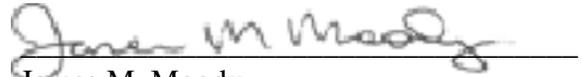
Defendants have responded and object to the dismissal without prejudice.

"Motions to dismiss without prejudice are addressed to the sound discretion of the district courts." *Kern v. TXO Production Corp.*, 738 F.2d 968, 970 (8th Cir. 1984). "The general practice of the federal courts is to permit voluntary dismissal, 'unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.'" *St. Paul Fire and Marine Ins. Co. v. Casualty Reciprocal Exchange*, 118 F.R.D. 480, 483 (W.D. Ark. 1987) (quoting 9 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2364 at 165 (1971)).

Rule 41(a)(2) gives the court discretion to order the dismissal "upon such terms and conditions as the court deems proper." Fed. R. Civ. P. 41(a)(2). The payment to the defendant of the expenses and a reasonable attorney fee may properly be a condition of the dismissal. *Kern*, 738 F.2d at 972.

The Court finds that Plaintiff's motion should be granted and orders that if Plaintiff should refile this action, Plaintiff will be required to pay costs and attorneys fees associated with the defense of this action which are duplicated in the refiled action.

IT IS SO ORDERED this 6th day of November, 2009.

A handwritten signature in cursive script, appearing to read "James M. Moody", is written over a horizontal line.

James M. Moody
United States District Judge