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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANIEL SWAIN et al.,

Plaintiffs,

v.

AIR & LIQUID SYSTEMS
CORPORATION, et al.,

Defendants.

Case No. CV 12-2168 FMO (JCGx)

**ORDER DISMISSING ACTION WITHOUT
PREJUDICE**

The court has received plaintiff's Notice of Dismissal Without Prejudice of Defendant Yarway Corporation ("Yarway Notice"), and Notice of Dismissal Without Prejudice of Defendant Henry Vogt Machine Co. ("Machine Notice") filed on October 9, 2013. Because defendants have filed Answers to plaintiff's Complaint,¹ the court will construe plaintiff's filing as a Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(2).

Once an answer has been filed to the operative complaint, a plaintiff may dismiss an action only by court order and on terms that the court considers proper. See Fed. R. Civ. P. 41(a)(2). Although defendants have filed an answer to the Complaint, that is an insufficient basis to deny plaintiff's request for dismissal. See, e.g., Hamilton v. Firestone Tire & Rubber Co., Inc., 679 F.2d

¹ Contrary to plaintiffs' statements in the Yarway Notice and Machine Notice, those defendants have in fact filed Answers.

1 143, 146 (9th Cir. 1982) (“The very purpose of Rule 41(a)(2) is to allow a District Court, in its
2 discretion, to dismiss an action without prejudice even after responsive pleadings have been filed
3 by the defendant.”); see also id. at 145 (“The Ninth Circuit has long held that the decision to grant
4 a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the District
5 Court[.]”). Under the circumstances, the court is persuaded that defendants will not suffer any
6 legal prejudice by the dismissal of the Complaint without prejudice. See id. (“In ruling on a motion
7 for voluntary dismissal, the District Court must consider whether the defendant will suffer some
8 plain legal prejudice as a result of the dismissal.”); Waller v. Financial Corp. of Am., 828 F.2d 579,
9 583 (9th Cir. 1987) (“In this circuit, as elsewhere, a district court should grant a motion for
10 voluntary dismissal unless a defendant can show that it will suffer some plain legal prejudice as
11 a result.”).

12 Based on the foregoing, IT IS ORDERED THAT:

13 1. Plaintiff’s Notice of Dismissal Without Prejudice of Defendant Yarway Corporation
14 **(Document No. 507)** shall be **construed** as plaintiff’s Motion to Dismiss the Complaint pursuant
15 to Federal Rule of Civil Procedure 41(a)(2). Plaintiff’s motion is **granted**.

16 2. Plaintiff’s Notice of Dismissal Without Prejudice of Defendant Henry Vogt Machine Co.
17 **(Document No. 508)** shall be **construed** as plaintiff’s Motion to Dismiss the Complaint pursuant
18 to Federal Rule of Civil Procedure 41(a)(2). Plaintiff’s motion is **granted**.

19 3. Given that all defendants have now been dismissed, the Clerk shall close the case and
20 serve copies of this Order on the parties.

21 Dated this 10th day of October, 2013.

22 /s/
23 _____
24 Fernando M. Olguin
25 United States District Judge
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