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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 REAL ESTATE DISPOSITION
12 CORPORATION,

Plaintiff,

v.

14 NATIONAL HOME AUCTION
15 CORPORATION, et al.,

Defendants.
16
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NO. CV 08-00435 SJO (Ex)

**ORDER GRANTING UNOPPOSED MOTION
FOR DISMISSAL**
[Docket No. 269]

18 This matter is before the Court on the Unopposed Motion for Dismissal, filed by Real Estate
19 Disposition Corporation ("REDC"), National Recreational Properties, Inc. ("NRP"),
20 LandAuction.com ("LandAuction"), J.C.R. Enterprises ("JCR"), and David Riemann ("Riemann")
21 on February 6, 2009. Defendant National Home Auction Corporation ("NHA") has not filed an
22 Opposition. The Court found this matter suitable for disposition without oral argument and vacated
23 the hearing set for March 2, 2009. See Fed. R. Civ. P. 78(b). For the following reasons, the
24 Motion is GRANTED.

25 I. BACKGROUND

26 On February 27, 2008, Plaintiff REDC filed suit against Defendants NHA, JCR, Riemann,
27 Robert Campbell ("Campbell"), and James Watson ("Watson"), alleging causes of action for
28 copyright infringement, unfair business competition, false or misleading advertising, breach of

1 confidence, misappropriation of trade secrets, fraud, breach of implied contract, and unjust
2 enrichment, Case No. CV 08-1331 SJO (Ex) (the "'1331 action"). (See *generally* Compl., No. CV
3 08-01331 SJO (Ex).) Pursuant to a stipulation under Federal Rule of Civil Procedure
4 41(a)(1)(A)(ii), filed July 11, 2008, Campbell and Watson were dismissed as defendants, leaving
5 only NHA, JCR, and Riemann as defendants in this action. (See Stipulation Dismissal Defs.
6 Robert Campbell & James Watson Only.)

7 On April 22, 2008, JCR, a defendant in the '1331 action, filed suit against the plaintiff in that
8 action, REDC, as well as NRP and LandAuction.com, for copyright infringement, Case No. CV 08-
9 00435 SJO (Ex) (the "'435 action"). (See Compl., No. CV 08-00435 SJO (Ex).) On July 14, 2008,
10 the Court consolidated the two cases for all purposes. (See Scheduling Conference Minutes, July
11 14, 2008.)

12 REDC, plaintiff in the '1331 action and defendant in the '435 action, and JCR, plaintiff in the
13 '435 action and defendant in the '1331 action, along with NRP and LandAuction, defendants in the
14 '435 action, and Riemann, a defendant in the '1331 action, (collectively, the "Moving Parties") filed
15 a Motion for Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). (See Unopposed
16 Motion Dismissal ("Mot.") 1.) The Moving Parties, which include all parties to this action other than
17 NHA, have reached a settlement agreement and, thus, seek dismissal of the action with prejudice
18 against all defendants with the exception of NHA. (See Mot. 1.)

19 II. DISCUSSION

20 Federal Rule of Civil Procedure 41(a)(2) provides that, unless all parties to the action have
21 signed a stipulation of dismissal or the plaintiff dismissed before the opposing party served either
22 an answer or a motion for summary judgment, "an action may be dismissed at the plaintiff's
23 request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41. "[T]he
24 decision to grant a voluntary dismissal under [Federal Rule of Civil Procedure] 41(a)(2) is
25 addressed to the sound discretion of the [d]istrict [c]ourt." *Hamilton v. Firestone Tire & Rubber*
26 *Co.*, 679 F.2d 143, 145 (9th Cir. 1982); see *Westland Water Dist., et al. v. United States, et al.*,
27 100 F.3d 94, 96 (9th Cir. 1996) (internal citation omitted). The "broad grant of discretion" that
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1 Federal Rule of Civil Procedure 41(a)(2) vests in the district court to dismiss "on terms that the
2 court considers proper" "does not contain a preference for one kind of dismissal or another."
3 *Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir. 2002); see Fed. R. Civ. P. 41(a)(2). As such, the
4 district court has discretion as to whether to grant a voluntary dismissal pursuant to Federal Rule
5 of Civil Procedure 41(a)(2) with or without prejudice. See *id.*

6 "A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless
7 a defendant can show that it will suffer some plain legal prejudice as a result." *Smith v. Lenches*,
8 263 F.3d 972, 975 (9th Cir. 2001) (internal citations omitted); *Waller, et al. v. Fin. Corp. of Am.*,
9 828 F.2d 579, 583 (9th Cir. 1987) (internal citation omitted). "[L]egal prejudice' means 'prejudice
10 to some legal interest, some legal claim, [or] some legal argument.'" *Smith*, 263 F.3d at 976
11 (quoting *Westland Water Dist., et al.*, 100 F.3d at 97). The late filing of a voluntary motion to
12 dismiss, expenses incurred in defending the litigation, inconvenience to the defendant, and any
13 tactical advantage to the plaintiff resulting from the voluntary dismissal do not establish legal
14 prejudice. See *Smith*, 263 F.3d at 976 (internal citations omitted); *Westland Water Dist., et al.*,
15 100 F.3d at 97 (internal citation omitted); *Hamilton*, 679 F.2d at 145 (internal citations omitted);
16 *Perfect 10, Inc. v. CWIE, LLC, et al.*, No. CV 02-7624 LGB (SHx), 2004 WL 5486517, at *2 (C.D.
17 Cal. Nov. 9, 2004) (citing *Westland Water Dist., et al.*, 100 F.3d at 97). Moreover, although
18 uncertainty resulting from the threat of future litigation is insufficient to establish plain legal
19 prejudice, *id.* at 96–97 (internal citations omitted), where a dismissal is with prejudice, such that
20 the claims cannot be reasserted, it is less likely that the dismissed defendants will suffer any legal
21 prejudice, see *Smith*, 263 F.3d at 976 ("That the district court here dismissed, with prejudice, the
22 federal claims so they cannot be reasserted in another federal suit only strengthens our conclusion
23 that the dismissal caused no legal prejudice . . ."). The Ninth Circuit, however, has found that
24 legal prejudice to remaining defendants would result where "the dismissal of a [defendant] would
25 have rendered the remaining [defendants] unable to conduct sufficient discovery to untangle
26 complex . . . claims and adequately defend themselves" *Westland Water Dist., et al.*, 100

1 F.3d at 97 (citing *Hyde & Drath v. Baker, et al.*, 24 F.3d 1162, 1169 (9th Cir. 1994)); see *Hyde &*
2 *Drath*, 24 F.3d at 1169.

3 Here, the Court exercises its discretion to grant the requested voluntary dismissal pursuant
4 to Federal Rule of Civil Procedure 41(a)(2), as the defendants in this action have not shown that
5 they will suffer "some plain legal prejudice" as a result of the dismissal. See *Smith*, 263 F.3d at
6 975 (internal citations omitted); *Waller, et al.*, 828 F.2d at 583 (internal citation omitted). Neither
7 the defendants to be dismissed nor NHA, the only defendant who is not involved in the settlement
8 and concomitant dismissal, contend that they would suffer any "legal prejudice" from the dismissal.
9 See *Yu-Santos v. Ford Motor Co.*, No. 1:06-CV-1773 AWI DLB, 2008 WL 1833986, at *2 (E.D.
10 Cal. Apr. 22, 2008); *Reynolds v. San Francisco Unified Sch. Dist.*, No. CV-02-5312, 2004 WL
11 1811157, at *1 (N.D. Cal. Aug. 9, 2004); Mot. 2; Decl. Brian M. Daucher Supp. Unopposed Mot.
12 Dismissal ("Daucher Decl.") ¶¶ 3–4, Exs. 1–2. Rather, the defendants to be dismissed have joined
13 in the Motion to Dismiss. See *Sun Life Assurance Co. of Can., U.S. v. Chirolo*, No. C 08-03465
14 WHA, 2009 WL 113009, at *6 (N.D. Cal. Jan. 16, 2009); Mot. Because the requested dismissal
15 is with prejudice, the claims cannot be reasserted against the defendants to be dismissed,
16 suggesting that there is no risk of prejudice to these defendants. See *Smith*, 263 F.3d at 976. As
17 such, the Court finds that the defendants to be dismissed will not suffer prejudice to any legal
18 interest, legal claim, or legal argument. See *Smith*, 263 F.3d at 976 (quoting *Westland water Dist.,*
19 *et al.*, 100 F.3d at 97).

20 Additionally, because NHA, the only defendant who did not join in the Motion to Dismiss
21 and who will remain as the sole defendant in this action if the Motion to Dismiss is granted, did not
22 file an Opposition and indicated that it did not oppose the Motion, it also has not shown that it will
23 suffer "some plain legal prejudice" as a result of dismissal of the other defendants. See *Smith*,
24 263 F.3d at 975 (internal citations omitted); *Waller, et al.*, 828 F.2d at 583 (internal citation
25 omitted); *Yu-Santos*, 2008 WL 1833986, at *1–*2; Mot. 2; Daucher Decl. ¶¶ 3–4, Exs. 1–2. To the
26 extent NHA was a joint tortfeasor with the other defendants such that joint and several liability is
27 applicable, entitling NHA to an offset of any settlement amounts, NHA would not suffer any legal
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1 prejudice by the dismissal of the other defendants, as NHA is free to conduct discovery on the
2 issue of offset. See *Ophthalmic Imaging Sys. v. Fukuhara*, No. CIVS04482 LKK DAD, 2005 WL
3 3454019, at *3 (E.D. Cal. Dec. 15, 2005). Moreover, this case does not present an especially
4 complex web of facts where dismissal of the other defendants would leave NHA unable to conduct
5 "sufficient discovery" in order to "adequately defend [it]sel[f]." See *Westland Water Dist., et al.*,
6 100 F.3d at 97 (citing *Hyde & Drath*, 24 F.3d at 1169); *Hyde & Drath*, 24 F.3d at 1169.
7 Accordingly, based on the evidence before the Court, the Court finds that NHA will not suffer
8 prejudice to any legal interest, legal claim, or legal argument. See *Smith*, 263 F.3d at 976 (quoting
9 *Westland water Dist., et al.*, 100 F.3d at 97).

10 Having determined that dismissal is appropriate because none of the defendants will suffer
11 legal prejudice, the Court, in its discretion, finds that dismissal with prejudice is appropriate. See
12 *Hamilton*, 679 F.2d at 145; *Hargis*, 312 F.3d at 412. Given that the Moving Parties, which include
13 the plaintiffs in both the '1331 action and the '435 action and all defendants to be dismissed,
14 requested dismissal with prejudice, all parties involved in the dismissal agree that dismissal with
15 prejudice is warranted. (See Mot. 2) Furthermore, the Moving Parties have reached a settlement
16 agreement, the finality of which would be undermined if the Court granted dismissal without
17 prejudice. See *Yu-Santos*, 2008 WL 1833986, at *1–*2 (finding dismissal with prejudice
18 appropriate where the defendant to be dismissed had reached a settlement agreement with the
19 plaintiff); Mot. 2.

1 III. RULING

2 For the foregoing reasons, the Court GRANTS the Unopposed Motion for Dismissal. Case
3 No. CV 08-00435 SJO (Ex) is DISMISSED WITH PREJUDICE as to all defendants. Case No. CV
4 08-1331 SJO (Ex) is DISMISSED WITH PREJUDICED as to defendants JCR and Riemann,
5 leaving NHA as the sole remaining defendant.

6 IT IS SO ORDERED.

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8 March 19, 2009



S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

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