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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENNIE MERKLEY, an individual,  
Plaintiff,

v.

CONTINENTAL LABOR RESOURCES,  
INC.; C.L KNOX, INC. d/b/a  
ADVANCED INDUSTRIAL SERVICES,  
INC.; and DOES 1 through 50,  
Defendants.

No. 1:14-cv-01867-DAD-JLT

ORDER DISMISSING WITH PREJUDICE  
CLAIMS AGAINST DEFENDANT C.L  
KNOX, INC. d/b/a ADVANCED  
INDUSTRIAL SERVICES

(Doc. No. 44)

C.L. KNOX, INC. d/b/a ADVANCED  
INSTRIAL SERVICES, INC.,  
Counter Claimant,

v.

CONTINENTAL LABOR RESOURCES,  
INC.,  
Counter Defendant.

On October 24, 2016, plaintiff filed a notice of settlement with defendant C.L. Knox, Inc. d/b/a Advanced Industrial Services (“C.L. Knox”) and a request for voluntary dismissal of defendant C.L. Knox from this action with prejudice. (Doc. No. 44.) Defendant C.L. Knox has

1 previously filed an answer in the action and counterclaim against defendant Continental Labor  
2 Resources, Inc. (Doc. No. 6.) Accordingly, plaintiff may no longer voluntarily dismiss under  
3 Federal Rule of Civil Procedure 41(a)(1), but must file a motion for voluntary dismissal under  
4 Rule 41(a)(2). Unlike a Rule 41(a)(1) notice of dismissal, a Rule 41(a)(2) motion requires court  
5 approval. See FED. R. CIV. P. 41(a); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir.  
6 1997).

7 A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a  
8 defendant can show that it will suffer some plain legal prejudice as a result. *Waller v. Fin. Corp.*  
9 *of Am.*, 828 F.2d 579, 583 (9th Cir. 1987); see also *Hamilton v. Firestone Tire & Rubber Co.*, 679  
10 F.2d 143, 145–46 (9th Cir. 1982). “Legal prejudice” means “prejudice to some legal interest,  
11 some legal claim, some legal argument.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97  
12 (9th Cir. 1996). A dismissal under Rule 41(a)(2) normally is without prejudice, as explicitly  
13 stated in that rule. However, a dismissal with prejudice so that claims cannot be reasserted in  
14 another federal suit strengthens the conclusion that the dismissal causes no legal prejudice and is  
15 not an abuse of discretion. See *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001). In this  
16 matter, defendant C.L. Knox will suffer no discernable legal prejudice, plaintiff represents that its  
17 claims against C.L. Knox have been settled, and plaintiff furthermore requests that the dismissal  
18 of those claims be with prejudice.

19 The court therefore finds that dismissal of plaintiff’s claims against defendant C.L. Knox  
20 with prejudice is appropriate. Accordingly, plaintiff’s claims against defendant C.L. Knox are  
21 dismissed with prejudice and the Clerk of the Court is directed to terminate C.L. Knox’s status as  
22 a defendant in the action. This dismissal does not affect C.L. Knox’s status as a counter claimant  
23 against counter defendant Continental Labor Resources, Inc.

24 IT IS SO ORDERED.

25 Dated: October 25, 2016

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28 UNITED STATES DISTRICT JUDGE