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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

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12 SEMMATERIALS, L.P., an  
13 Oklahoma limited partnership,

NO. CIV. S-08-843 FCD/GGH

14 Plaintiff,

v.

MEMORANDUM AND ORDER

15 MARTIN BROTHERS CONSTRUCTION,  
16 a California corporation,

Defendant.

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18 This matter is before the court on plaintiff SemMaterials,  
19 L.P.'s motion for voluntary dismissal, pursuant to Fed. R. Civ.  
20 P. 41(a)(2), of its complaint against defendant Martin Brothers  
21 Construction ("Martin Brothers").<sup>1</sup> Plaintiff moves for dismissal  
22 on the ground that Martin Brothers completed the subject Caltrans  
23 Contracts using a sub-licensee for the alleged patented NOVACHIP  
24 Process, thereby mooting the infringement complaint against  
25 Martin Brothers.  
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27 <sup>1</sup> Because oral argument will not be of material  
28 assistance, the court orders this matter submitted on the briefs.  
E.D. Cal. L.R. 78-230(h).

1 Martin Brothers does not oppose the motion. (Docket #64.)  
2 As such, the court GRANTS plaintiff's motion. Plaintiff's  
3 complaint against Martin Brothers is HEREBY dismissed without  
4 prejudice.<sup>2</sup>

5 IT IS SO ORDERED.

6 DATED: July 15, 2009



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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> The case remains pending on Martin Brothers' counter-  
27 claim against plaintiff. (Docket #11.) However, the case is  
28 presently stayed pursuant to the court's order of July 25, 2008  
(Docket #48), due to the notice of filing of bankruptcy by  
plaintiff (Docket #47).