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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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10 NATOMAS GARDENS INVESTMENT  
11 GROUP LLC, a California  
12 limited liability company,  
13 ORCHARD PARK DEVELOPMENT  
14 LLC, a California limited  
15 liability company,

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NO. CIV. S-08-2308 LKK/EFB

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Plaintiffs,

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v.

O R D E R

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JOHN G. SINADINOS, et al.,

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Defendants.

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**I. VOLUNTARY DISMISSAL**

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Counter-plaintiff Larry Deane requests a dismissal without prejudice of his counter-claim against Eric Solorio. Solorio requests that the counter-claim be dismissed "with prejudice," and that he be awarded costs and "lost wages." The court will generally grant a party's request to dismiss his own claims, voluntarily and without prejudice, so long as there is no "plain legal prejudice" to other parties. See Smith v. Lenches, 263 F.3d

1 972, 975 (9th Cir. 2001). No such prejudice is shown here, and  
2 accordingly the action will be dismissed without prejudice,  
3 pursuant to Fed. R. Civ. P. 41(a)(2).

4 However, counter-defendant has defended against the counter-  
5 claim at least by filing an Answer, and is entitled to payment of  
6 his costs and fees upon filing of a proper cost bill after  
7 dismissal. See Westlands Water Dist. v. U.S., 100 F.3d 94, 97 (9th  
8 Cir. 1996).

9 **II. ORDER TO SHOW CAUSE**

10 Counsel for the moving party, counter-plaintiff Larry Deane  
11 failed to appear for the previously scheduled hearing on the  
12 voluntary dismissal motion. The court ordered counsel to show  
13 cause why he should not be sanctioned \$150 for failing to appear  
14 at the hearing on his own noticed motion. The court has reviewed  
15 counsel's submission explaining his failure to appear, and  
16 concludes that the \$150 sanction is warranted.

17 **III. CONCLUSION**

18 For the reasons stated above:

19 1. Jason W. Burgess, counsel for counter-claimaint Larry  
20 Deane, is ordered to **PAY SANCTIONS** in the amount **\$150** to the Clerk  
21 of this Court within ten (10) days from the effective date of this  
22 order. Counsel shall also file with the court an affidavit  
23 indicating that said sanction is paid personally by counsel, out  
24 of personal funds, and is not to be billed, directly or indirectly,  
25 to the client or in any way made the responsibility of the client.

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2. Deane's counter-claim against Solorio is **DISMISSED**  
**WITHOUT PREJUDICE.**

3. Solorio's request for lost wages is **DENIED**; and

4. Solorio's request for costs is **DENIED** without prejudice  
to a properly supported submission under the local rules. See  
Local Rule 292.

IT IS SO ORDERED.

DATED: April 26, 2012.



LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT