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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROCKET FUEL INC.
DERIVATIVE LITIGATION

Case No. 15-cv-04625-PJH

**ORDER DENYING PROPOSED
VOLUNTARY DISMISSAL**

Re: Dkt. No. 77

On August 26, 2016, this court granted defendants' motion to dismiss the complaint in this shareholder derivative action for failure to comply with the particularized pleading requirements of Federal Rule of Civil Procedure 23.1. Dkt. 75. The order provided plaintiffs leave to file an amended complaint, which was due on September 21. Id. at 14.

On September 21, instead of filing an amended complaint per the court's order, plaintiffs filed a request to voluntarily dismiss the action without prejudice. See Dkt. 77 ("Notice and [Proposed] Order Regarding Voluntary Dismissal"). As this is a derivative shareholder action, voluntary dismissal under Rule 41(a)(1) is inappropriate. See Fed. R. Civ. P. 23.1(c) (requiring court approval for voluntary dismissal). Moreover, nominal defendant Rocket Fuel opposes the plaintiffs' request unless dismissal is with prejudice. Dkt. 78. The court therefore DENIES plaintiffs' request to voluntarily dismiss the action without prejudice.

The court further ORDERS the plaintiffs to file an amended complaint by **October 5**. If the plaintiffs do not comply with the court's order by that date, their inaction will

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constitute grounds for a dismissal with prejudice under Federal Rule of Civil Procedure 41(b). Alternatively, if the plaintiffs do not intend to amend their complaint, they may stipulate to a dismissal of this action with prejudice.

IT IS SO ORDERED.

Dated: September 28, 2016



PHYLLIS J. HAMILTON
United States District Judge