

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

AMERICAN REGISTRY, LLC, a  
Delaware limited liability  
company,

Plaintiff,

v.

Case No: 2:13-cv-352-FtM-29CM

YONAH HANAW, MICHAEL LEVY,  
SHOWMARK HOLDINGS, LLC, a  
Delaware limited liability  
company, and SHOWMARK MEDIA,  
LLC, a Delaware limited  
liability company,

Defendants.

---

**OPINION AND ORDER**

This matter comes before the Court on plaintiff's Verified Motion for Voluntary Dismissal With Prejudice (Doc. #66) filed on October 23, 2014. Defendants filed a Response in Opposition (Doc. #68) to the request, seeking to reach the merits of the claims or to receive their incurred attorney's fees and costs. On November 7, 2014, the Court took the Verified Motion under advisement and provided the parties an opportunity to resolve the matter or for plaintiff to file a Reply. (Doc. #69.) On November 17, 2014, plaintiff filed a Reply (Doc. #71) stating that the parties were unable to reach an agreement, and seeking dismissal with prejudice but without costs or attorney's fees.

Plaintiff is proceeding on a portion of a Third Amended Complaint (Doc. #36), to which an Answer (Doc. #62) has been filed. (Doc. #61.) To oversimplify, plaintiff has now become uncomfortable with the credibility of its primary source of information (referred to by the initials PR), who plaintiff asserts is now offering his testimony to the highest bidder. Plaintiff seeks to dismiss all its claim against defendants with prejudice, but seeks a condition that it not be required to pay attorney fees or costs. Defendants oppose the dismissal, even with prejudice, asserting a "vested interest" in continuing the litigation, vindicating themselves, and potentially obtaining attorney fees and costs.

This action is governed by Rule 41(a)(2), which provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). A dismissal with prejudice will operate as a judgment on the merits in favor of defendants, as plaintiff concedes. The Court rejects defendants' position that they have a vested interest in continuing the litigation, and finds that no prejudice will result to defendants upon such a dismissal. Dismissal with prejudice will place defendants in no worse of a position than if they had prevailed on a summary judgment motion or at trial.

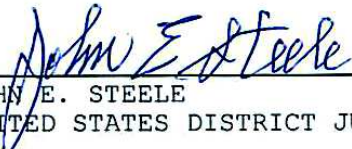
The Court is unwilling, however, to condition the dismissal with prejudice upon either the granting or denying of attorney fees and costs. Upon dismissal, defendants may seek attorney fees and/or costs in the same manner as any defendant who has prevailed on the merits. Whether defendants are entitled to such fees, and the amounts, are left for another day.

Accordingly, it is hereby

**ORDERED:**

1. Plaintiff's Verified Motion for Voluntary Dismissal With Prejudice (Doc. #66) is **GRANTED** to the extent that the case is dismissed with prejudice, and is **DENIED** to the extent that plaintiff or defendants seek to further condition the dismissal. The Clerk shall enter judgment dismissing the case with prejudice against all defendants.
2. The Clerk shall further terminate all pending motions and deadlines as moot and close the file.
3. Defendants may file any motions for attorney fees and/or costs as provided by law.

**DONE and ORDERED** at Fort Myers, Florida, this 5th day of December, 2014.

  
\_\_\_\_\_  
JOHN E. STEELE  
UNITED STATES DISTRICT JUDGE

Copies: Counsel of Record