

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CHEEBURGER CHEEBURGER
RESTAURANTS, INC.,

Plaintiff,

v.

Case No: 2:13-cv-558-FtM-38DNF

4JZINK, LLC, EUGENE H. REES,
JOSEPH L. SCHAFFER, MICHAEL
HALAMA and DAVID R. HALAMA,

Defendants.

ORDER

This matter comes before the Court on Plaintiff and Defendants Joseph L. Shafer, Michael Halama, David R. Halama, and 4JZink, LLC's Joint Stipulation of Dismissal (Doc. #40) filed on November 6, 2013. These Parties, through their respective counsel, stipulate to the dismissal of this case without prejudice.

Also before the Court is Plaintiff's Notice of Voluntary Dismissal of Defendant Eugene H. Rees, Jr. (Doc. #41) filed on November 6, 2013. Plaintiff gives notice of voluntary dismissal of this case against Defendant Eugene H. Rees, Jr., who has yet to be served in this matter or otherwise enter an appearance.

Fed. R. Civ. P. 41(a)(1) provides that an action may be dismissed by the plaintiff without order of the court by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. Here, all Parties to this litigation who have appeared have signed and consented to the Stipulation. As Defendant Rees


has yet to appear in this matter, the Notice of Voluntary Dismissal filed by the Plaintiff will dismiss this action against him.

Accordingly, it is now

ORDERED:

- (1) This matter is hereby **DISMISSED without prejudice** pursuant to Plaintiff and Defendants Joseph L. Shafer, Michael Halama, David R. Halama, and 4JZink, LLC's Joint Stipulation of Dismissal (Doc. #40) and pursuant to Plaintiff's Notice of Voluntary Dismissal of Defendant Eugene H. Rees, Jr. (Doc. #41), with each party to bear its own attorneys' fees and costs.
- (2) The Clerk of the Court is directed to enter judgment accordingly, terminate any pending motions and deadlines, and **CLOSE** the file.

DONE and **ORDERED** in Fort Myers, Florida this 6th day of November, 2013.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record