

AJS WEIGHTLOSS, LLC,

Plaintiff,

v.

Case No: 2:13-cv-711-FtM-38DNF

MICHAEL S. ROSENTHAL and  
WAGNER, JOHNSTON &  
ROSENTHAL, P.C.,

Defendants/Third  
Party Plaintiffs

THIRD EYE MANAGEMENT AND  
MARKETING, INC.,

Third Party Defendant.

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**ORDER**<sup>1</sup>

This matter comes before the Court on Third Party Plaintiff's Notice of Voluntary Dismissal without Prejudice ([Doc. #49](#)) filed on October 28, 2014. [Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)](#), allows a plaintiff to dismiss a case without a court order. The Rule reads in pertinent part:

Subject to Rules 23(e), 23.1, 23.2 and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order 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.

[Fed. R. Civ. P. 41\(a\)\(1\)\(A\)](#).

In this instance Third Party Plaintiffs Michael S. Rosenthal and Wagner Johnston & Rosenthal, P.C. indicate this matter is dismissed without prejudice. Third Party

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Defendant Third Eye Management and Marketing, Inc. has not filed an answer or motion for summary judgment. Therefore, this matter is due to be dismissed pursuant to [Rule 41\(a\)\(1\)\(A\)\(i\)](#).

Accordingly, it is now

**ORDERED:**

1. Pursuant to the Third Party Plaintiff's Notice of Voluntary Dismissal without Prejudice ([Doc. #49](#)) and [Rule 41\(a\)\(1\)\(A\)\(i\)](#), the Third Party Complaint ([Doc. #15](#)) is **DISMISSED without prejudice**.
2. In light of this instant Order and the Court's October 24, 2014 Order, ([Doc. #48](#)), the Clerk is directed to terminate any pending motions, enter judgment, and close the case.

**DONE** and **ORDERED** in Fort Myers, Florida this 28th day of October, 2014.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record