

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**DOUGLAS DENDINGER**

**VERSUS**

**COVIDIEN LP, ET AL.**

**CIVIL ACTION**

**NO. 18-4168**

**SECTION "L" (5)**


**ORDER AND REASONS**

Before the Court is a motion to dismiss for failure to state a claim filed by W.L. Gore & Associates, Inc. (“Gore”). R. Doc. 34. Plaintiff originally brought this products liability action against Gore, Covidien LP, Medtronic, Inc., C.R. Bard, Inc., and Davol, Inc. After Gore’s motion was filed, Plaintiff filed a notice of voluntary dismissal without prejudice as to Gore, C.R. Bard, Inc., and Davol, Inc., R. Doc. 42.

Federal Rule of Civil Procedure 41(a)(1)(A)(i) allows a plaintiff to voluntarily dismiss an action, without prejudice, by filing a notice of dismissal at any time before service by the defendant of an answer or motion for summary judgment. “[O]nly an answer or a motion for summary judgment will suffice to preclude a plaintiff from dismissing under Rule 41(a)(1)(A)(i)” and “[a]n argument that a filing short of an answer or a motion for summary judgment joins the merits of the case, has consumed significant resources or effort, or is sufficiently equivalent to a motion for summary judgment, will not be heard.” *In re Amerijet Int’l, Inc.*, 785 F.3d 967, 974 (5th Cir. 2015) (per curiam). A voluntary dismissal may include fewer than all defendants, and the notice of dismissal is self-effectuating – no order or action of the district court is required. *Id.*; *Plains Growers By & Through Florists’ Mut. Ins. Co. v. Ickes-Braun Glasshouses, Inc.*, 474 F.2d 250, 253 (5th Cir. 1973).

Plaintiff's notice of voluntary dismissal as to Gore, C.R. Bard, Inc., and Davol, Inc. was filed before service by Defendants of either an answer or a motion for summary judgment. Accordingly, Gore's motion to dismiss for failure to state a claim, R. Doc. 34, is hereby **DENIED AS MOOT**.

New Orleans, Louisiana, this 24th day of October, 2018.

  
UNITED STATES DISTRICT JUDGE