

No. 4:14CV456 RLW

Under Federal Rule of Civil Procedure 41(a)(2), after a defendant has served an answer, “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court

considers proper.” Further, ““a decision whether to allow a party to voluntarily dismiss a case rests upon the sound discretion of the court.”” *Thatcher v. Hanover Ins. Grp., Inc.*, 659 F.3d 1212, 1213-14 (8<sup>th</sup> Cir. 2011) (quoting *Hamm v. Rhone-Poulenc Rorer Pharm., Inc.*, 187 F.3d 941, 950 (8<sup>th</sup> Cir. 1999)).

In the instant case, the Court finds that dismissal of Roper’s counterclaim is proper. Litigating the claim and the counterclaim in the same court promotes judicial economy and eliminates the possibility of inconsistent rulings. As stated in this Court’s Memorandum and Order of April 3, 2015, the case has not progressed to the point where judicial time and effort would be wasted. Further, as previously stated, the parties are not prejudiced by dismissing the action, as they may use discovery taken in federal court in the state court proceedings, and defending claims in a second action does not constitute legal prejudice. *Mullen v. Heinkel Filtering Sys., Inc.*, 770 F.3d 724, 728 (8<sup>th</sup> Cir. 2014).

Accordingly,

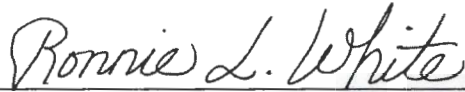
**IT IS HEREBY ORDERED** that Defendant Jeffrey Roper’s Motion to Voluntarily Dismiss his Counterclaim without Prejudice (ECF No. 73) is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant Jeffrey Roper’s Motion to Compel (ECF No. 55) is **DENIED** as **MOOT**.

**IT IS FURTHER ORDERED** that Defendant Jeffrey Roper’s Motion for Summary Judgment (ECF No. 57) is **DENIED** as **MOOT**.

**IT IS FINALLY ORDERED** that Defendant Jeffrey Roper’s Motion to Extend

Deadline to File Reply to his Motion for Summary Judgment (ECF No. 74) is **DENIED**  
as **MOOT**.

  
\_\_\_\_\_  
**RONNIE L. WHITE**  
**UNITED STATES DISTRICT JUDGE**

Dated this 27<sup>th</sup> Day of April, 2015.