UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

CHEVRON CORPORATION,

Petitioner.

To Issue Subpoenas For The Taking Of Depositions And the Production Of Documents.

ORDER

11-MC-7003-TC

COFFIN, Magistrate Judge:

On November 1, 2011 Chevron Corporation filed an application under 28 U.S.C. § 1782 to conduct discovery from Environmental Law Alliance (ELAW) to use in foreign proceedings. (#1). Both parties have consented to magistrate jurisdiction. Currently before me is Chevron's notice of voluntary dismissal under Fed. R. Civ. P. 4(a)(1)(A)(i), which ELAW opposes. (#s 31, 32). ELAW argues that I should treat Chevron's notice of voluntary dismissal as a request for dismissal under Fed. R. Civ. P. 41(a)(2) and dismiss this matter with prejudice with fees and costs¹ to ELAW.

¹I note that in its response, Chevron committed to covering the costs and fees ELAW incurred—as of December 5, 2011, in connection with responding to this action. (#33 at 3).

Fed. R. Civ. P. 4(a)(1)(A)(i) provides that a plaintiff has an absolute right to dismiss a case without prejudice prior to a defendant filing an answer or responsive motion for summary judgment. The Ninth Circuit has held a plaintiff's absolute right under Rule 41(a)(1) to voluntarily dismiss an action when the defendant has not yet served an answer or a motion for summary judgment leaves no rule for the court to play, stating:

The language of rule 41(a)(1) is unequivocal. It permits a plaintiff to dismiss an action "without order of court." ... "Th[e] [filing of notice] itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. There is not even a perfunctory order of court closing the file. Its alpha and omega was the doing of the plaintiff alone. He suffers no impairment beyond his fee for filing."

<u>American Soccer Co., Inc. v. Score First Enterprises</u>, 187 F.3d 1108, 1110 (9th Cir. 1999). (internal citations omitted). Here, a review of the docket reveals that ELAW has filed neither an answer nor a responsive pleading. Accordingly, Chevron's notice of voluntary dismissal dismissed this action without prejudice. I am without jurisdiction to consider ELAW's objections.

Accordingly, the Clerk of the Court is directed to enter an order dismissing this action without prejudice.

IT IS SO ORDERED DATED this ______ day of December 2011.

THOMAS M. COFFIN United States Magistrate Judge