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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 LEISURE CONCEPTS, INC.,

8 Plaintiff,

9 v.

10 CALIFORNIA HOME SPAS, INC., a  
California corporation doing business  
as Covervalet; DISCOUNTER'S  
11 POOL & SPA WAREHOUSE, a  
Canadian corporation; and  
12 LITEHOUSE PRODUCTS, LLC., a  
Delaware corporation,

13 Defendants.  
14

NO: 2:14-CV-388-RMP

ORDER GRANTING PLAINTIFF'S  
MOTION TO VOLUNTARILY  
DISMISS COPYRIGHT  
INFRINGEMENT CLAIM

15 Before the Court is Plaintiff's Motion to Voluntarily Dismiss its Copyright  
16 Infringement Claim, ECF No. 69. The Court has reviewed the record and is fully  
17 informed.

18 Plaintiff moves to dismiss the copyright infringement claim alleged in its  
19 complaint, and is not opposed to this Court dismissing the claim with prejudice.  
20 *See* ECF No. 69 at 3. Despite Defendant's accusations that Plaintiff is acting with  
21 malicious intent, Defendant does not oppose the Motion. *See* ECF No. 70 at 2.

ORDER GRANTING PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS  
COPYRIGHT INFRINGEMENT CLAIM ~ 1

1 Defendant joins in Plaintiff's request for a voluntary dismissal with  
2 prejudice but goes beyond responding to the Motion to argue that it should now be  
3 granted attorney's fees as the "prevailing party." *Id.* at 3-4. In response to  
4 Defendant's request for leave to file a motion for attorney's fees, the Court grants  
5 Defendant leave to file a motion for attorney's fees if Defendant has additional  
6 support for such an award. However, in light of the fact that Defendant states its  
7 concerns over incurring costs defending this suit, this Court references the  
8 applicable law here to save Defendant from feeling to need to file motions that are  
9 likely futile.

10 Regarding costs and attorney's fees, the Copyright Act provides:

11 In any civil action under this title, the court in its discretion may allow  
12 the recovery of full costs by or against any party other than the United  
13 States or an officer thereof. Except as otherwise provided by this title,  
the court may also award a reasonable attorney's fee to the prevailing  
party as part of the costs.

14 17 U.S.C. § 505. The Court's determination of fees under the Copyright Act is  
15 only reviewed for an abuse of discretion. *See Cadkin v. Loose*, 569 F.3d 1142,  
16 1146-47 (9th Cir. 2009). The Ninth Circuit has determined that "a "prevailing  
17 party" is one who has been awarded some relief by the court.' The key inquiry is  
18 whether some court action has created a 'material alteration of the legal  
19 relationship of the parties.'" *Cadkin v. Loose*, 569 F.3d 1142, 1148 (9th Cir. 2009)  
20 (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human*  
21 *Res.*, 532 U.S. 598, 603-604 (2001)).

1 Plaintiff voluntarily dismissed its copyright claim allegedly to focus on its  
2 patent infringement claim due to the insubstantial amount of damages that would  
3 result if they prevailed on the copyright claim. *See* ECF No. 77 at 4. Nonetheless,  
4 Plaintiff argues that its claim was viable and intimately tied to its remaining claim  
5 for patent infringement. *Id* at 4, 10. Defendant has not presented any evidence to  
6 the contrary.

7 Defendant still must defend against allegations of patent infringement that  
8 are associated with the claim that now has been voluntarily dismissed. Therefore,  
9 the legal relationship of the parties has not been materially altered. The issues  
10 simply are narrowed as this case progresses.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 1. Plaintiff's Motion to Voluntarily Dismiss its Copyright Infringement  
13 Claim, **ECF No. 69**, is **GRANTED**.
- 14 2. Plaintiff's claim of copyright infringement related to its instruction  
15 manual, Count 2, is **DISMISSED WITH PREJUDICE**.

16 The District Court Clerk is directed to enter this Order and provide copies to  
17 counsel.

18 **DATED** this 12th day of February 2016.

19 *s/ Rosanna Malouf Peterson*  
20 ROSANNA MALOUF PETERSON  
21 United States District Judge