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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RIVKIE BERGER, <u>et al.</u> ,)	Case No. CV 13-5074 FMO (AGRx)
Plaintiffs,)	
v.)	ORDER DISMISSING ACTION WITH
AVEDA CORPORATION, <u>et al.</u> ,)	PREJUDICE AS TO PLAINTIFF AND
Defendants.)	WITHOUT PREJUDICE AS TO THE
)	PUTATIVE CLASS

The court has received plaintiff’s Notice of Voluntary Dismissal With Prejudice As To Plaintiff and Without Prejudice As To The Putative Class, filed on April 8, 2014. Because defendants have filed a Motion to Dismiss Plaintiff’s Complaint, (see Motion to Dismiss Complaint Pursuant to Federal Rules of Civil Procedure 8, 9(b) and 12(b)(6)), the court will construe plaintiff’s filing as a Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(2).

Once an answer has been filed to the operative complaint, a plaintiff may dismiss an action only by court order and on terms that the court considers proper. See Fed. R. Civ. P. 41(a)(2). Although defendants have filed a motion to dismiss the Complaint, that is an insufficient basis to deny plaintiff’s request for dismissal. See, e.g., Hamilton v. Firestone Tire & Rubber Co., Inc., 679 F.2d 143, 146 (9th Cir. 1982) (“The very purpose of Rule 41(a)(2) is to allow a District Court, in its discretion, to dismiss an action without prejudice even after responsive pleadings have been filed by the defendant.”); see also id. at 145 (“The Ninth Circuit has long held that the decision to

