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7 Attorneys for Plaintiffs, Individually and On
8 Behalf of All Others Similarly Situated

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

12 HRAYR SHAHINIAN, M.D., F.A.C.S.,
13 et al.,

14 Plaintiffs,

15 vs.

16 KIMBERLY-CLARK CORPORATION,
a Delaware Corporation, and HALYARD
HEALTH, INC., a Delaware
17 Corporation,

18 Defendants.

19 Defendants.

CASE NO.: 14-CV-08390 DMG (SHx)

Assigned for all purposes to:
Hon. Dolly M. Gee

**PLAINTIFF HRAYR
SHAHINIAN’S NOTICE OF
MOTION AND MOTION FOR
VOLUNTARY DISMISSAL OF HIS
INDIVIDUAL CLAIMS WITH
PREJUDICE PURSUANT TO
RULE 41(a) OF THE FEDERAL
RULES OF CIVIL PROCEDURE**

HEARING DATE: March 11, 2016

HEARING TIME: 9:30 a.m.

LOCATION: Courtroom 7
312 N. Spring St.
Los Angeles, CA

1 **TO THE HONORABLE COURT AND ALL PARTIES**

2 Please take notice that on March 11, 2016 at 9:30 a.m., or as soon thereafter as
3 this matter may be heard in the above-entitled Court located at 312 N. Spring St., Los
4 Angeles, California 90012-4701, Plaintiff Hrayr Shahinian will and hereby does move
5 this Court for voluntary dismissal of his individual claims against Defendants
6 Kimberly-Clark Corporation and Halyard Health, Inc. (“Defendants”) in this lawsuit,
7 *with* prejudice, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. The
8 claims of the remaining Plaintiffs will continue unaffected and this Motion has no
9 bearing on those claims.

10 This Motion is made following the conference of counsel pursuant to L.R. 7-3,
11 which took place on January 29, 2016 (and previously).

12 This Motion is based on this Notice of Motion and Motion; the accompanying
13 Memorandum of Points and Authorities; the accompanying declaration of Michael
14 Avenatti, the pleadings and papers filed in this action; and such further argument and
15 matters as may be offered at the time of the hearing of this Motion.

16
17 Dated: February 5, 2016

EAGAN AVENATTI, LLP

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20 By: /s/ Michael J. Avenatti
21 Michael J. Avenatti
22 Attorneys for Plaintiffs, Individually and
23 On Behalf of All Others Similarly Situated
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 a Delaware Corporation, and HALYARD
 16 HEALTH, INC., a Delaware
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CASE NO.: 14-CV-08390 DMG (SHx)

Assigned for all purposes to:
 Hon. Dolly M. Gee

**PLAINTIFF HRAYR
 SHAHINIAN’S MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT OF MOTION FOR
 VOLUNTARY DISMISSAL OF HIS
 INDIVIDUAL CLAIMS WITH
 PREJUDICE PURSUANT TO
 RULE 41(a) OF THE FEDERAL
 RULES OF CIVIL PROCEDURE**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Hrayr Shahinian seeks dismissal of his individual claims against
4 Defendants Kimberly-Clark Corporation and Halyard Health, Inc. (“Defendants”) in
5 this lawsuit, *with* prejudice, pursuant to Rule 41(a) of the Federal Rules of Civil
6 Procedure. The remaining Plaintiffs in this action do *not* seek dismissal of their claims.
7 Those claims will continue unaffected and this Motion has no bearing on those claims.

8 Because there is no basis to compel Plaintiff Shahinian to pursue claims he
9 wishes to dismiss with prejudice, the Court should grant this Motion.

10 Counsel for Plaintiff Shahinian has met and conferred with counsel for
11 Defendants regarding this Motion. [Declaration of Michael J. Avenatti, ¶¶2-4.]
12 Defendants’ counsel, however, does not consent to the relief sought in this Motion and,
13 instead, seeks to impose unreasonable conditions on dismissal. [*Id.*] Plaintiff
14 Shahinian, therefore, files this Motion.

15 **II. THE COURT SHOULD DISMISS PLAINTIFF SHAHINIAN’S CLAIMS**
16 **WITH PREJUDICE**

17 Absent the defendant’s service of either an answer or motion for summary
18 judgment, or a stipulation of the parties, “an action may be dismissed at the plaintiff’s
19 request only by court order, on terms that the court considers proper.” Fed. R. Civ. P.
20 41(a)(2).

21 “The Ninth Circuit has long held that the decision to grant a voluntary dismissal
22 under Rule 41(a)(2) is addressed to the sound discretion of the District Court, and its
23 order will not be reversed unless the District Court has abused its discretion.” Hamilton
24 v. Firestone Tire & Rubber Co., Inc., 679 F.2d 143, 145 (9th Cir. 1982). “In ruling on a
25 motion for voluntary dismissal, the District Court must consider whether the defendant
26 will suffer some plain legal prejudice as a result of the dismissal.” *Id.* “Plain legal
27 prejudice, however, does not result simply when defendant faces the prospect of a
28 second lawsuit or when plaintiff merely gains some tactical advantage.” *Id.* A

1 defendant also cannot establish plain legal prejudice “merely by asserting that it had
2 begun trial preparations.” Id.; see also In re Lowenschuss, 67 F.3d 1394, 1400-01 (9th
3 Cir. 1995) (reversing order denying request for conditional withdrawal because “[a]t
4 most, Lowenschuss has been inconvenienced by expending time and resources in
5 preparing for the trial and we have held that [t]he inconvenience of defending another
6 lawsuit or the fact that the defendant has already begun trial preparations does not
7 constitute prejudice.”) (internal quotation omitted).

8 In Hamilton, for example, the Ninth Circuit affirmed the district court’s order
9 granting a motion for voluntary dismissal even though (1) the plaintiff sought dismissal
10 *without* prejudice, (2) the defendant had filed a counterclaim and cross-claim and had
11 proceeded with discovery, and (3) following dismissal, the plaintiff pursued a pending
12 parallel claim in Alabama state court. 679 F.2d at 145. The Court explained that the
13 defendant “has not established plain legal prejudice merely by asserting that it had
14 begun trial preparations.” Id. The Court rejected as “without merit” the defendant’s
15 argument that the plaintiff was estopped from requesting a voluntary dismissal
16 “because [the defendant] was put to significant expense in preparing and filing its
17 pleadings[.]” Id. at 146.

18 Here, there is no basis to deny dismissal. The dismissal sought is *with* prejudice
19 and would dispose of all of Plaintiff Shahinian’s claims against Defendants. Courts
20 routinely grant motions to dismiss an action *with* prejudice “because it ends the
21 litigation between the parties.” See Schwarzer, Tashima & Wagstaffe, Cal. Practice
22 Guide: Federal Civil Procedure Before Trial, ¶16:364.5 (The Rutter Group 2016); see
23 also Shepard v. Egan, 767 F. Supp. 1158, 1165 (D. Mass. 1990) (“[I]t is difficult, both
24 practically and logistically, to imagine a court denying a plaintiff’s motion to dismiss
25 her own action with prejudice.”). This case presents an even more attenuated basis to
26 deny dismissal than Hamilton.

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1 **III. CONCLUSION**

2 For the reasons set forth above, Plaintiff Hrayr Shahinian respectfully requests
3 that this Court grant this motion to dismiss his individual claims with prejudice
4 pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

5
6 Dated: February 5, 2016

EAGAN AVENATTI, LLP

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8 By: /s/ Michael J. Avenatti
9 Michael J. Avenatti
10 Attorneys for Plaintiffs, Individually and
11 On Behalf of All Others Similarly Situated
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CASE NO.: 14-CV-08390 DMG (SHx)

Assigned for all purposed to:
 Hon. Dolly M. Gee

**DECLARATION OF MICHAEL J.
 AVENATTI IN SUPPORT OF
 PLAINTIFF HRAYR
 SHAHINIAN’S MOTION FOR
 VOLUNTARY DISMISSAL OF HIS
 INDIVIDUAL CLAIMS WITH
 PREJUDICE PURSUANT TO
 RULE 41(a) OF THE FEDERAL
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HEARING DATE: March 11, 2016
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 LOCATION: Courtroom 7
 312 N. Spring St.
 Los Angeles, CA

DECLARATION OF MICHAEL J. AVENATTI

I, MICHAEL J. AVENATTI, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an attorney with the law firm of Eagan Avenatti, LLP (“Eagan Avenatti” or the “firm”), counsel of record for Plaintiffs. I am submitting this declaration in support of Plaintiff Hrayr Shahinian Motion for Voluntary Dismissal of His Individual Claims With Prejudice Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. I have personal knowledge of the information stated herein and if called to testify to the same would and could do so.

2. For several weeks, I had made defense counsel aware that we were likely to be dismissing Plaintiff Shahinian’s individual claims in this lawsuit and the previous responses and objections served were merely placeholders. On January 29, 2016, I definitively informed defense counsel on the phone that we would be dismissing Shahinian’s individual claims in the next week, and later informed defense counsel that it would be done on Friday, February 5. During the January 29 call, I do not recall defense counsel ever mentioning any opposition to the impending dismissal, nor do I recall defense counsel conditioning the dismissal on any factor. Defense counsel also sent a letter to my office on February 1, but did not indicate that Defendants’ consent to dismissal would be conditioned on any factor.

3. We therefore believed Defendants were not opposed to the dismissal and, accordingly, my office filed Plaintiff Shahinian’s motion for voluntary dismissal on February 5 as “Unopposed.” Shortly after the filing the same day, I received an e-mail from defense counsel claiming Defendants consented to the dismissal with prejudice only if Shahinian agreed to provide responses to certain discovery, and that unless Shahinian agreed to this condition, Defendants intended to oppose Shahinian’s motion.

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CASE NO.: 14-CV-08390 DMG (SHx)

Assigned for all purposes to:
Hon. Dolly M. Gee

**[PROPOSED] ORDER GRANTING
PLAINTIFF HRAYR
SHAHINIAN’S MOTION FOR
VOLUNTARY DISMISSAL OF HIS
INDIVIDUAL CLAIMS WITH
PREJUDICE**

[PROPOSED] ORDER

1
2
3 Upon consideration of the PLAINTIFF HRAYR SHAHINIAN’S MOTION FOR
4 VOLUNTARY DISMISSAL OF HIS INDIVIDUAL CLAIMS WITH PREJUDICE,
5 and for good cause shown, the Court hereby Orders as follows:

6 1. Plaintiff Hrayr Shahinian’s motion is GRANTED. Pursuant to Rule 41(a)
7 of the Federal Rules of Civil Procedure, Mr. Shahinian’s individual claims are hereby
8 dismissed with prejudice.

9 2. As the remaining Plaintiffs in this action do not seek dismissal of their
10 claims, those claims will continue unaffected and this Order has no bearing on those
11 claims.

12 IT IS SO ORDERED.

13
14 DATED: _____

15 **HON. DOLLY M. GEE**
16 **UNITED STATES DISTRICT JUDGE**