

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HAPPY HEALTHCARE, S.A. de C.V.

Plaintiff,

v.

ONLINE TRANSPORT INTL, LLC,
TAYLOR BIO ARMOR, LLC,
JOSEPH LASSEN,
ENRIQUE G. SERNA, and
SERNA & ASSOCIATES, PLLC

Defendants.

Civil Action No. 5:20-cv-1038

SERNA & ASSOCIATES, PLLC,

*Cross-Claimant and Third-Party
Plaintiff,*

v.

AUSTIN TAYLOR and TAYLOR &
PERRY INVESTMENT GROUP, LLC,

Third-Party Defendants.

**UNOPPOSED MOTION TO DISMISS WITH PREJUDICE ENRIQUE G. SERNA AND
SERNA & ASSOCIATES**

TO THE HONORABLE COURT:

Plaintiff Happy Healthcare, S.A. de C.V. (“**Happy Healthcare**” or “**Plaintiff**”), pursuant to Federal Rule of Civil Procedure 41(a)(2), files this unopposed Motion to Dismiss with prejudice (“**Motion**”) claims against Defendants Enrique G. Serna (“**Serna**”) and Serna & Associates (“**S&A**”) (collectively, the “**Serna Parties**”) asserted in the above-styled action. Plaintiff respectfully shows the Court as follows:

I. INTRODUCTION

1. On September 2, 2020, Happy Healthcare filed this suit against the Serna Parties and Online Transport Intl, LLC, Taylor Bio Armor, LLC, and Joseph Lassen (collectively, the “**OTI Parties**”), alleging breach of contract, breach of fiduciary duty, and fraud, among other claims. *See* Amended Complaint [Dkt. No. 11] ¶¶68–126; Original Complaint [Dkt. No. 1]. These claims originated from the sale of five shipments of protective face masks to the Serna Parties and the OTI Parties between April and June of 2020.

2. Happy Healthcare has since reached a settlement of its claims against the Serna Parties. Pursuant to that settlement, Happy Healthcare hereby requests that the Court dismiss its claims against the Serna Parties with prejudice. Happy Healthcare maintains its claims against the OTI Parties and S&A maintains its crossclaims against the OTI Parties and third-party claims against Third-Party Defendants Austin Taylor and Taylor & Perry Investment Group, LLC (collectively, the “**Third-Party Defendants**”).

II. ARGUMENT & AUTHORITIES

3. A motion for voluntary dismissal should be granted “unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *John M. Crawley, L.L.C. v. Trans-Net, Inc.*, 394 F. App’x 76, 78 (5th Cir. 2010) (quoting *Elbaor v. Tripath Imaging Inc.*, 279 F.3d 314, 317 (5th Cir.2002)). “The primary purpose of Rule 41(a)(2) is to prevent voluntary dismissals which unfairly affect the other side, and to permit the imposition of curative conditions.” *Elbaor*, 279 F.3d at 317 (internal quotation omitted).

4. Plaintiff seeks a dismissal because Happy Healthcare and the Serna Parties have settled the claims between them.

5. Plaintiff diligently moved for dismissal as soon as it was reasonable to do so. Only two months have elapsed since filing, no dispositive motions have been filed, and depositions have not begun. *See Crawley*, 384 F. App'x at 79 (holding no abuse of discretion when district court granted dismissal under similar circumstances). Additionally, time is less of a factor when determining whether a dismissal with prejudice would harm a defendant. *See Schwarz v. Folloder*, 767 F.2d 125, 129 (5th Cir. 1985) (“Consequently, no matter when a dismissal with prejudice is granted, it does not harm the defendant: The defendant receives all that he would have received had the case been completed.”).

6. The Serna Parties are unopposed to this motion and will not be prejudiced by the dismissal.

7. As such, Plaintiff requests that the claims asserted in this matter against the Serna Parties be dismissed with prejudice. Plaintiff notes that some of its remaining claims against the OTI Parties – as well as potential claims against the Third-Party Defendants and/or other owners, representatives, partners, and affiliates of the OTI Parties or Third-Party Defendants – may be based in part on the actions of the Serna Parties in their capacities as agents, partners, or representatives of other parties. Plaintiff expressly reserves the right to pursue such claims. *See Knutson v. Morton Foods, Inc.*, 603 S.W.2d 805, 808 (Tex. 1980) (“A plaintiff will be able to settle with a tortfeasor who acts for another without being fearful of losing his cause of action against the party who may be liable under respondeat superior.”).

III. CONCLUSION & PRAYER

8. For the forgoing reasons, Plaintiff requests that the Court grant this Motion and issue an order for the relief requested herein. Plaintiff further requests all other relief, at law or in equity, to which it may be entitled.

Dated: November 22, 2020

Respectfully submitted,

By: /s/ Jason Davis
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CERTIFICATE OF CONFERENCE

I certify that I have conferred with Mr. Edward Snyder, counsel for Defendants Enrique G. Serna and Serna & Associates, and he does not oppose this Motion to Dismiss.

CERTIFICATE OF SERVICE

I certify that on the 22nd day of November 2020, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and all counsel of record will receive an electronic copy via the Court's CM/ECF system.

/s/ Jason Davis
Jason M. Davis