

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

INFUSAID LLC,

Plaintiff,

v.

INFUSYSTEM INC. AND ERIC K. STEEN,

Defendants.

Case No. 17-2243-CM

MEMORANDUM AND ORDER

Plaintiff InfusAID LLC filed this breach of contract action against defendants InfuSystem Inc. and Eric K. Steen. Defendants filed an answer (Doc. 9) and a partial motion to dismiss (Doc. 11). In their motion, defendants ask the court to dismiss Counts III and VI of the complaint. Plaintiff then filed a “Notice of Voluntary Dismissal Pursuant to FRCP 41(a)(1)(A)(i)” (Doc. 14). In that document, plaintiff attempts to voluntarily dismiss Counts III and VI. But subsection (a)(1)(A)(i) of Rule 41 only applies when a defendant has not filed an answer or a motion for summary judgment. Here, defendants filed an answer. Plaintiff therefore may not voluntarily dismiss its claims without a court order. *See* Fed. R. Civ. P. 41(a)(2).

Because plaintiff has indicated a willingness to voluntarily dismiss Counts III and VI, the court will grant defendant’s motion. In light of the posture of this case, however, and plaintiff’s desire to voluntarily dismiss these counts, the court will dismiss them without consideration of the merits of the claims, without prejudice.

IT IS THEREFORE ORDERED that Defendants' Partial Motion to Dismiss (Doc. 11) is granted. Counts III and VI are dismissed without prejudice.

Dated this 27th day of July, 2017, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge