

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

EMP SHIELD, LLC,

Plaintiff,

v.

DISASTERPREPARER, LLC, et al.,

Defendants.

Case No. 19-2109-DDC-JPO

MEMORANDUM AND ORDER

This matter is before the court on plaintiff EMP Shield, LLC's Unopposed Motion to Dismiss with Prejudice. Doc. 40. The court construes plaintiff's motion as one made under Federal Rule of Civil Procedure 41(a)(2), since defendants have filed an Answer (Doc. 29) and the parties have not filed a stipulation of dismissal signed by all the parties. *See* Fed. R. Civ. P. 41(a)(1)(A)(i)–(ii). Rule 41(a)(2) provides that the court may allow a plaintiff to dismiss an action voluntarily “on terms the court considers proper.” Fed. R. Civ. P. 41(a)(2). “The rule is designed primarily to prevent voluntary dismissals which unfairly affect the other side, and to permit the imposition of curative conditions.” *Phillips USA, Inc. v. Allflex USA, Inc.*, 77 F.3d 354, 357 (10th Cir. 1996) (quotation omitted). So, “[a]bsent ‘legal prejudice’ to the defendant, the district court normally should grant such a dismissal.” *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir. 1997) (first citing *Am. Nat’l Bank & Trust Co. of Sapulpa v. Bic Corp.*, 931 F.2d 1411, 1412 (10th Cir. 1991); then citing *McCants v. Ford Motor Co.*, 781 F.2d 855, 856–57 (11th Cir. 1986)).

Plaintiff's motion represents that the matter has been resolved, and that defendants DisasterPreparer, LLC, and Arthur Thomas Bradley do not oppose the dismissal. The motion

also asserts that all parties will bear their own costs. Because defendants have not opposed the motion, the court concludes that defendants will not experience “legal prejudice” because of the voluntary dismissal with prejudice. *Ohlander*, 114 F.3d at 1537. The court thus grants plaintiff’s motion.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff EMP Shield, LLC’s Unopposed Motion to Dismiss with Prejudice is granted. The court directs the Clerk of the Court to close this case.

IT IS SO ORDERED.

Dated this 19th day of June, 2019, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge