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

RED.COM, LLC,

Plaintiff,

v.

**JINNI TECH, LTD. and BRUCE
ROYCE,**

Defendants.

Case No.: SACV 17-00382-CJC(KESx)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR VOLUNTARY
DISMISSAL WITHOUT PREJUDICE
[Dkt. 94]**

24
25 Plaintiff Red.com brings this action against Defendants Jinni Tech, Ltd. and Bruce
26 Royce, asserting causes of action for patent infringement, trademark infringement, false
27 advertising, unfair competition, unjust enrichment, and breach of contract. (Dkt. 26 [First
28 Amended Complaint].) Through discovery, Plaintiff has learned that Defendants would

1 likely be unable to pay a damage award should Plaintiff prevail. To avoid incurring
2 further litigation costs when there is a slim likelihood of recovery, Plaintiff now seeks
3 voluntary dismissal of this action without prejudice. (Dkt. 94.) Defendants do not
4 oppose dismissal of this action without prejudice. (Dkt. 95 [Defs.' Response to Pl.'s
5 Mot.].) They only ask that the Court retain jurisdiction to entertain a motion for
6 attorneys' fees should Defendants choose to file one at a later date. (*Id.* at 2.)

7
8 Federal Rule of Civil Procedure 41 allows a plaintiff to request a court order
9 dismissing its case when a defendant has already served an answer to the complaint. Fed.
10 R. Civ. P. 41(a)(2); *cf. id.* 41(a)(1)(A)(i). The determination of whether the dismissal
11 should be with or without prejudice rests in the Court's sound discretion. *See*
12 *Stevedoring Servs. of Am. v. Armilla Int'l B.V.*, 889 F.2d 919, 921 (9th Cir. 1989). "The
13 purpose of [Rule 41(a)(2)] is to permit a plaintiff to dismiss an action without prejudice
14 so long as the defendant will not be prejudiced or unfairly affected by the dismissal." *Id.*
15 Defendants do not oppose dismissal of this action without prejudice. Nor is there any
16 evidence that such a dismissal would prejudice or unfairly affect Defendants.
17 Accordingly, dismissal without prejudice is proper. *See Smith v. Lenches*, 263 F.3d 972,
18 975 (9th Cir. 2001) ("A district court should grant a motion for voluntary dismissal under
19 Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as
20 a result.").

21
22 Defendants ask that the Court retain jurisdiction over this action to hear a potential
23 motion for attorneys' fees. But Defendants' two-sentence response to Plaintiff's motion
24 fails to articulate any cognizable basis for awarding attorneys' fees here. While
25 attorneys' fees may be awarded in conjunction with an order granting voluntary
26 dismissal, a fee award is not a "prerequisite" to issuing such an order. *Stevedoring*
27 *Servs.*, 889 F.2d at 921. To the extent Defendants seek attorneys' fees under the Patent
28 Act, it provides for attorneys' fees in "exceptional cases." *Octane Fitness, LLC v. ICON*

1 *Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014). Exceptional cases are those that
2 “stand[] out from others with respect to the substantive strength of a party’s litigating
3 positions (considering both the governing law and the facts of the case) or the
4 unreasonable manner in which the case was litigated.” *Id.* at 554. There is no evidence
5 that Plaintiff’s case was meritless, brought in bad faith, or litigated in an unreasonable
6 manner. Further, any fee award would be limited to the cost of counsel’s services in
7 preparing work product that could not be used in later litigation on this matter. *Koch v.*
8 *Hankins*, 8 F.3d 650, 651 (9th Cir. 1993). Defendants’ counsel has offered no evidence
9 that their work in this action could not be used in any future litigation of Plaintiff’s
10 claims. For the foregoing reasons, Plaintiff’s motion is **GRANTED**. The First Amended
11 Complaint is hereby **DISMISSED WITHOUT PREJUDICE**.¹

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15 DATED: June 26, 2019



16
17 CORMAC J. CARNEY

18 UNITED STATES DISTRICT JUDGE

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28 ¹ Having read and considered Plaintiff’s motion, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for July 8, 2019, at 1:30 p.m. is hereby vacated and off calendar.