

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Hard Rock Café International (USA), Inc.,
a Florida corporation,

and

Tarsadia Hotels,
a California corporation,

Plaintiffs,

v.

RockStar Hotels, Inc.
a Florida corporation,

Defendant.

CIVIL ACTION NO. 17-cv-62013

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS WITH PREJUDICE
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2)**

The Court granted Plaintiffs Hard Rock Café International (USA), Inc.'s ("Hard Rock") and Tarsadia Hotels' (collectively "Plaintiffs") previous motion to dismiss this matter on the condition that Plaintiffs bear some portion of Defendant's legal expenses if any are found to not be useful in a later lawsuit. *See* ECF No. 87. Plaintiffs did not agree to that condition and withdrew the motion to dismiss without prejudice. *See* ECF No. 88.

Plaintiffs instead move to dismiss this matter *with* prejudice pursuant to Rule 41(a)(2). Plaintiffs hereby incorporates by reference its Motion for voluntarily dismissal (*see* ECF No. 77), but now seeks for the dismissal to be with prejudice. *See* Fed. R. Civ. P. 41(a)(2). Now that Plaintiffs have decided to dismiss with prejudice, there is no possibility of subsequent litigation, so consequently there should be no award of attorneys' fees and costs. Defendant would not lose

any substantial right by this dismissal. *See Pontenberg v. Boston Sci. Corp.*, 252 F.3d 1253, 1255 (11th Cir. 2005) (citing *McCants v. Ford Motor Co., Inc.*, 781 F.2d 855, 857 (11th Cir. 1986)).

Plaintiffs have provided the good faith basis by which is has chosen to dismiss because discovery has revealed that Defendant is not a “soft hotel brand” but is more akin to a hotel booking website, such as Expedia or Orbitz, and for that reason and the guidance provided by the Court in its Preliminary Injunction ruling, Plaintiffs seek to discontinue this lawsuit. *See* ECF No. 87, at 3. In its ruling on the Preliminary Injunction, the Court refused to find that Plaintiffs lacked a good faith basis for bringing the motion, and held only that they did not prevail at this “stage” of the case based on the evidence presented to date. *See* ECF No. 76, at 58-59. While Plaintiffs believe that they have a good faith basis for continuing this case, including the recently-produced discovery information, they have chosen to voluntarily dismiss this matter now, with prejudice.

Plaintiffs respectfully request that the Court grant Plaintiffs’ motion to voluntarily dismiss with prejudice, without the payment of costs or fees to either side.

RULE 7.1(A)(3) CERTIFICATION OF COUNSEL

Plaintiffs have met and conferred with Defendant’s counsel in an effort to resolve by agreement the issues raised in this Motion, and Defendant has not agreed to the relief sought herein.

Dated: July 19, 2018

Respectfully submitted,

DORSEY & WHITNEY LLP

By: /s/Jeremy T. Elman
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2018, a true and correct copy of the foregoing instrument has been served by:

CM/ECF ELECTRONIC CASE FILING said document and transmission of the Notification of Electronic Filing by the Clerk to a Registered Participant(s), addressed as indicated on below Service List; and

SERVICE LIST

<u>VIA CM/ECF</u>	<u>COUNSEL FOR DEFENDANT, ROCKSTAR HOTELS, INC.</u>	Nancy Pritikin, Esq. Sheppard, Mullin, Richter & Hampton LLP 379 Lytton Avenue Palo Alto, California 94301-1479
<u>VIA CM/ECF</u>	<u>CO-COUNSEL FOR DEFENDANT, ROCKSTAR HOTELS, INC.</u>	Michelle Kahn, Esq. Sheppard, Mullin, Richter & Hampton LLP Four Embarcadero Center, 17 th Floor San Francisco, California 92111
<u>VIA CM/ECF</u>	<u>CO-COUNSEL FOR DEFENDANT, ROCKSTAR HOTELS, INC.</u>	Laura L. Chapman, Esq. Sheppard, Mullin, Richter & Hampton LLP Four Embarcadero Center, 17 th Floor San Francisco, California 92111
<u>VIA CM/ECF</u>	<u>CO-COUNSEL FOR DEFENDANT, ROCKSTAR HOTELS, INC.</u>	Yasamin Parsafar, Esq. Sheppard, Mullin, Richter & Hampton LLP Four Embarcadero Center, 17 th Floor San Francisco, California 92111

This Certificate was executed on July 19, 2018 at Palo Alto, Santa Clara County, California.

/s/ Jeremy T. Elman

JEREMY T. ELMAN

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Hard Rock Café International (USA), Inc., a Florida corporation,	:	CIVIL ACTION No. 17-CV-62013
	:	
and	:	
	:	
Tarsadia Hotels, a California corporation,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
RockStar Hotels, Inc. a Florida corporation,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	
	:	

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION TO VOLUNTARILY
DISMISS WITH PREJUDICE PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2)**

THIS CAUSE comes before the Court on the Plaintiffs’ Motion to Voluntarily Dismiss Without Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(2). Having reviewed the record and being fully informed, it is **ORDERED AND ADJUDGED** that

(1) This matter is dismissed with prejudice and the case is closed;

DONE AND ORDERED in Chambers at Miami, Florida, this ___ of ____, 2018.

BETH BLOOM
UNITED STATES DISTRICT JUDGE