No. _____

In The
Supreme Court of the United States

TODD PHILLIPPI,

Petitioner,

v.

HUMBLE DESIGN, L.L.C.
AND WARREN DAVID HUMBLE,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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December 8, 2020
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Clerk

No. 20-10386

AUTOMATION SUPPORT, INCORPORATED, *doing business as* TECHNICAL SUPPORT,

Plaintiff—Appellant,

TODD PHILLIPPI,

Movant—Appellant,

versus

HUMBLE DESIGN, L.L.C.; WARREN DAVID HUMBLE,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-04455

Before WIENER, COSTA, and WILLETT, *Circuit Judges*.

GREGG COSTA, *Circuit Judge*:

This case began almost six years ago when Automation Support, Inc., sued former employees and one employee's new company, Humble Design, L.L.C., under the Texas Theft Liability Act (TTLA). But what started as a case about theft of trade secrets has mutated into a protracted dispute over attorney's fees—a dispute we already resolved.

After a year and a half of litigation in the district court, the parties agreed to voluntarily dismiss all claims with prejudice. In the joint stipulation, defendants Humble Design and Warren Humble reserved the right to seek attorney's fees under the TTLA, which is a "loser pays" law. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 134.005(b). The magistrate judge later awarded those fees.

Multiple rounds of appeals and motions to vacate the judgment ensued. In 2018, we affirmed the magistrate judge's decision and remanded for the district court to award appellate attorney's fees. *Automation Support, Inc. v. Humble Design, L.L.C.*, 734 F. App'x 211, 216 (5th Cir. 2018). When Automation Support and associated individuals[1] tried, belatedly, to appeal again, we dismissed for lack of jurisdiction. *Automation Support, Inc. v. Humble Design, L.L.C.*, 796 F. App'x 223, 224 (5th Cir. 2020).

Automation Support is appealing once more. The current appeal concerns its most recent motion for relief from judgment under Rule 60(b), in which it again argued that the magistrate judge did not have jurisdiction to award attorney's fees. The magistrate judge denied the motion in March 2020, and this appeal is timely only as to the order denying that Rule 60 motion. Automation Support cannot appeal the underlying judgment that issued years ago.

To the extent Automation Support argues that the defendants were not prevailing parties, we have already rejected that argument. *See Automation Support*, 734 F. App'x at 215–16. Under the law of the case doctrine, "ordinarily an issue of fact or law decided on appeal may not be

[1] The plaintiffs in this case also include Automation Support's owners, Renee and Bill McElheney, and former attorney Todd Phillippi, all of whom purport to act on behalf of the company. We refer to the plaintiffs collectively as "Automation Support."

reexamined either by the district court on remand or by the appellate court on subsequent appeal." *United States v. Lee*, 358 F.3d 315, 320 (5th Cir. 2004) (citation and quotation marks omitted); *see Musacchio v. United States*, 136 S. Ct. 709, 716 (2016). We held in 2018 that the defendants were entitled to attorney's fees. *Automation Support*, 734 F. App'x at 216. Our ruling was final then and remains so today.

Automation Support's new attack—that the Rule 41 joint dismissal deprived the district court of jurisdiction to later award fees—is wrong. This latest effort to undo the fee award flies in the face of well-established law that a court can award attorney's fees after a voluntary dismissal. *See, e.g.*, *Zimmerman v. City of Austin*, 969 F.3d 564, 568–69 (5th Cir. 2020) ("Ancillary enforcement jurisdiction extends to fees."); *Qureshi v. United States*, 600 F.3d 523, 525 (5th Cir. 2010) (explaining that a court retains authority to award attorney's fees after a Rule 41 dismissal); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) (noting it is "well established that a federal court may consider collateral issues after an action is no longer pending" and listing attorney's fees as an example).[2] District courts routinely award fees after an entry of final judgment. *Cooter*, 496 U.S.

[2] An old Fifth Circuit decision holds that a district court lacks jurisdiction to enter a fee award once the plaintiff files a self-executing dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i). *See Williams v. Ezell*, 531 F.2d 1261, 1264 (5th Cir. 1976). Although the Supreme Court rejected that view in *Cooter*, 496 U.S. at 395, *Williams* continues to cause confusion about a district court's ability to consider fee motions after a Rule 41 dismissal. *See, e.g.*, *Lightsource Analytics, LLC v. Great Stuff, Inc.*, 2014 WL 4744789 (W.D. Tex. Sept. 23, 2014). Today we make explicit what our cases like *Qureshi* have long recognized: the Supreme Court overruled *Williams v. Ezell* to the extent it states that a Rule 41 dismissal deprives a court of jurisdiction to rule on a fee request or other ancillary matter. *See Qureshi*, 600 F.3d at 525; *see also Dunster Live, LLC v. LoneStar Logos Mgmt. Co.*, 908 F.3d 948, 951 (5th Cir. 2018) (reviewing order, entered after Rule 41 dismissal, that denied fee request and affirming because a dismissal without prejudice does not produce a prevailing party).

at 395 (recognizing that "even 'years after the entry of a judgment on the merits,' a federal court could consider an award of counsel fees" (quoting *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 451 n.13 (1982))).

Instead of accepting our earlier ruling, Automation Support has inundated the district court and our court with rounds of frivolous filings attempting to secure a different outcome. Because of Automation Support's stubborn, bad-faith refusal to recognize what we held three years ago, defendants may file a motion with this court for appellate attorney's fees under 28 U.S.C. § 1927.

* * *

"We meant what we said, and we said what we meant." *See* DR. SEUSS, HORTON HATCHES THE EGG (1940). We once again AFFIRM the judgment of the district court.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AUTOMATION SUPPORT, INC., et al.,	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Case No. 3:14-CV-4455-BK**
	§	
WARREN DAVID HUMBLE, et al.,	§	
Defendants.	§	

ORDER

The Court is called upon to determine whether Defendants Warren David Humble and Humble Design, LLC (collectively "Defendants") are entitled to an award of attorneys' fees and costs pursuant to their *Rule 54 Motion for Entry of Award of Attorney's Fees and Costs.* Doc. 51 (the "Fee Motion"). After having carefully considered the pleadings, briefs, and applicable case law, Defendants' motion is **GRANTED**.

A. Procedural History

In December 2014, Plaintiffs filed a complaint against Defendants as well as a third defendant, Becky Wallace. Doc. 1. Plaintiffs alleged claims against Defendants for (1) breach of contract; (2) breach of fiduciary duty; (3) tortious interference with a contract; (4) misappropriation of trade secrets; and (5) violation of the Texas Theft Liability Act (the "TTLA"). Doc. 1 at 10, 12-17. In due course, Wallace was dismissed from the case after filing a *Suggestion of Bankruptcy*. Doc. 42; Doc. 43.

Defendants filed their *Second Amended Answer* to Plaintiffs' complaint in which they pled for recovery of their attorneys' fees and costs under the TTLA and the Texas Uniform Trade Secrets Act. Doc. 34 at 10 (citing TEX. CIV. PRAC. & REM. CODE, §§ 134.005(b), 134A.005(1)). On July 15, 2016, Defendants moved for summary judgment. Doc. 46. On August 5, 2016, the

parties filed a *Joint Stipulation of Voluntary Dismissal with Prejudice of Plaintiffs' Claims Against Defendants* (the "Joint Stipulation"). Doc. 50. The Joint Stipulation contained a provision reserving Defendants' right to seek recovery of their attorneys' fees and costs from Plaintiffs. Doc. 50. Shortly thereafter, Defendants filed this Fee Motion invoking the TTLA, seeking recovery of their attorneys' fees and costs from Plaintiffs. Doc. 51 at 12.

B. Applicable Law

The TTLA provides that "[e]ach person who prevails in a suit under this chapter shall be awarded court costs and reasonable and necessary attorney's fees." TEX. CIV. PRAC. & REM. CODE § 134.005(b). The award of attorneys' fees to a prevailing party in a TTLA action is mandatory. *Arrow Marble, LLC v. Estate of Killion*, 441 S.W.3d 702, 705 (Tex. App.—Houston [1st Dist.] 2014) (citing *Bocquet v. Herring*, 972 S.W.2d 19, 20 (Tex. 1998) ("Statutes providing that a party 'may recover,' 'shall be awarded,' or 'is entitled to' attorney fees are not discretionary.")); *see also Merritt Hawkins & Assoc., LLC v. Gresham*, No. 13-CV-0312-P, 2015 WL 10738602, at *7-8 (N.D. Tex. August 13, 2015) (Solis, J.) (citing *Arrow Marble* in noting the mandatory nature of a TTLA award). A nonsuit does not affect any pending claim for affirmative relief or motion for attorneys' fees or sanctions. *Epps v. Fowler*, 351 S.W.3d 862, 863 (Tex. 2011).

For purposes of the TTLA, the "prevailing party" is the party who either successfully prosecutes the theft action or successfully defends against it. *Arrow Marble*, 441 S.W. 3d at 705. The TTLA requires the court to award attorneys' fees to a prevailing defendant "without any prerequisite that the claim is found to be groundless, frivolous, or brought in bad faith." *Air Routing Int'l Corp. (Canada) v. Britannia Airways, Ltd.*, 150 S.W.3d 682, 686 (Tex. App.—Houston [14th Dist.] 2004). The TTLA claim must actually be litigated for either party to be

entitled to fees. *See Cigna Ins. Co. of Tex. v. Middleton*, 63 S.W.3d 901, 903 (Tex. App.—Eastland 2001) (holding that employee was not entitled to attorneys' fees under the TTLA because both parties nonsuited their claims, leaving no issue upon which the employee could have prevailed).

The Texas Supreme Court has held that "a defendant is a prevailing party when a plaintiff nonsuits a case with prejudice" because the res judicata effect of doing so results in "a permanent, inalterable change in the parties' legal relationship to the defendant's benefit." *Epps*, 351 S.W.3d at 868-69. A dismissal or nonsuit with prejudice is "tantamount to a judgment on the merits." *Dean v. Riser*, 240 F.3d 505, 509 (5th Cir. 2001).

In *Arrow Marble*, the defendant was held to be a prevailing party on a TTLA claim when the trial court dismissed the plaintiff's claim with prejudice for lack of prosecution and because it was not based on evidence presented at trial. 441 S.W.3d at 706-07. The court, citing *Epps*, stated that it had "no doubt that a defendant who is the beneficiary of a nonsuit with prejudice would be a prevailing party" for purposes of the TTLA.[1] *Id.* at 708. Evidence of the amount of fees owed may be based on the testimony of counsel without the necessity of producing billing records. *Holmes v. Concord Homes, Ltd.*, 115 S.W.3d 310, 316-17 (Tex. App.—Texarkana 2003) (affirming award of attorneys' fees based on the testimony of counsel without the introduction of any billing records).

C. Parties' Arguments

Defendants assert, as is relevant here, that they are entitled to an award of fees and costs under the TTLA because they prevailed when Plaintiffs dismissed their claims with prejudice.

[1] Indeed, even a dismissal without prejudice can result in an award of fees under the TTLA if the defendant can demonstrate that the nonsuit was taken to avoid an unfavorable ruling on the merits. *Epps*, 351 S.W. 3d at 870.

Doc. 51 at 7-9. Defendants contend that from inception through the date on which they filed the instant motion, their total attorneys' fees were $65,676.00 and costs were $3,528.12. Doc. 51 at 12-16.

Plaintiffs respond that one of the business owners, Renee McElheney, was diagnosed with cancer and had multiple surgeries both before and after they filed their response to the Fee Motion. Doc. 55 at 2-3. Plaintiffs assert that ultimately they decided to dismiss their case due to the toll Ms. McElheney's diagnosis had wrought. Doc. 55 at 2-3. They argue that Defendants are not prevailing parties under the TTLA because they cannot show that Plaintiffs dismissed their case either to avoid an adverse judgment or because exceptional circumstances warrant an award of attorneys' fees under Rule 41 of the Federal Rules of Civil Procedure. Doc. 55 at 3-5. Plaintiffs also note that the legal relationship between Defendants and Plaintiffs was immediately terminated as soon as judgment was entered because the statute of limitations on their claims had run at that point, and they could not timely file another complaint raising those claims. Doc. 55 at 7. Plaintiffs do not, however, dispute the amount of attorneys' fees and costs claimed by Defendant.

Defendants reply that it is immaterial why Plaintiffs agreed to a dismissal with prejudice and, in any event, Plaintiffs agreed to Defendants' reservation of their right to seek fees and costs in the Joint Stipulation. Doc. 56 at 2-4. Moreover, Defendants contend, Rule 41 does not apply in this case because they are seeking fees and costs based on the TTLA, an independent statute. Doc. 56 at 4-5. Accordingly, they argue that they do not have to prove that Plaintiffs' claims were baseless because the TTLA does not require that showing. Doc. 56 at 6-8.

D. Analysis

The Court finds that Plaintiffs' dismissal of their case with prejudice is akin to a judgment on the merits of their claims. *Epps*, 351 S.W.3d at 868. As Defendants point out, the reasons for the dismissal are not material. Neither can Plaintiffs' reliance on Rule 41 save them from entry of a fee award in Defendants' favor. While the dismissal of Plaintiffs' case was entered pursuant to Rule 41, Defendants are relying on the TTLA and their reservation of rights in the Joint Stipulation to secure an award of costs and fees. Rule 41 simply does not come into play.

Plaintiffs' reliance on *Dean*, 240 F.3d at 511 (5th Cir. 2001) is also misplaced. In that case, the court held that a defendant was not a prevailing party simply because the plaintiffs had voluntarily dismissed their claim with prejudice pursuant to Rule 41. Rather, the court ruled that a defendant is only considered a prevailing party when the defendant can establish that the plaintiffs dismissed their case to avoid a judgment on the merits and the suit was frivolous, groundless, or without merit. *Dean*, 240 F.3d at 511-12. The relevant fee statute in *Dean*, however, governs fee awards in civil rights cases and is not mandatory, while the fee provision under the TTLA is mandatory. *See* 42 U.S.C. § 1988(b) (providing that "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs") (emphasis added).

Finally, Plaintiffs claim that the Court made clear in *Epps* that a defendant must show that a dismissal was taken voluntarily to avoid an adverse judgment and that the suit was baseless to be entitled to attorneys' fees. *Epps*, 351 S.W.3d at 869-70. Plaintiffs misrepresent *Epps*. The discussion in that section of the opinion pertains to cases that are dismissed *without* prejudice. In

sum, Defendants are entitled to an award of their fees and costs. Because Plaintiffs do not contest the amount of fees and costs sought, they have waived that argument.

E. Conclusion

For the reasons discussed above, Defendants' *Rule 54 Motion for Entry of Award of Attorney's Fees and Costs,* Doc. 51, is **GRANTED**. Plaintiffs are **ORDERED** to pay to Defendants, within 60 days of the date of this Order, attorneys' fees in the amount of $65,676.00 and costs in the amount of $3,528.12.

SIGNED February 14, 2017.

RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AUTOMATION SUPPORT, INC. ET AL.,	§	
PLAINTIFFS,	§	
	§	
V.	§	**CIVIL CASE NO. 3:14-CV-4455-BK**
	§	
HUMBLE DESIGN LLC,	§	
WARREN DAVID HUMBLE,	§	
DEFENDANTS.	§	

ORDER

Before the Court are Plaintiff Automation Support, Inc. d/b/a Technical Support's *Federal Rule of Civil Procedure Rule 60(b) Motion for Relief from Judgment*, Doc. 114, and *Motion to Strike*, Doc. 119, as well as *Defendants' Motion for Attorney's Fees and Pre-Filing Injunction*, Doc. 116. As detailed below, Plaintiff's motions are **DENIED**, and Defendants' motion is **GRANTED** to the extent stated herein.

As all concerned are thoroughly familiar with this case, the Court will be brief.[1] In December 2014, Automation Support sued Defendants for (1) breach of contract; (2) breach of fiduciary duty; (3) tortious interference with a contract; (4) misappropriation of trade secrets; and (5) violation of the Texas Theft Liability Act (the "TTLA"). Doc. 1 at 10, 12-17. Eventually the parties filed a joint stipulation of voluntary dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

[1] Unless otherwise noted, the facts that follow are drawn from the most recent appellate decision dismissing "movant" Todd Phillippi's appeal for lack of jurisdiction. *Automation Support v. Humble Design, LLC*, No. 19-10769, 2020 WL 1042509 (5th Cir. March 3, 2020) (recognizing that the district judge lacked jurisdiction to overturn this Court's orders).

Defendants then sought attorney's fees under the TTLA, which entitles a prevailing party to fees and costs. The Court granted the motion and ordered Automation Support to pay $69,204.12. Automation Support appealed that ruling as well as the Court's denial of its request to vacate the judgment under Federal Rule of Civil Procedure 60. The Court of Appeals for the Fifth Circuit affirmed both orders and remanded for an award of appellate attorneys' fees, and the Court subsequently awarded Defendants an additional $33,997.58. In the meantime, defense counsel withdrew from the case. Doc. 84.

What followed was an onslaught of *pro se* filings by Automation Support's non-attorney owners/principals, Renee and Billy McElheney, as well as disbarred attorney Todd Phillippi, who variously styled themselves as Automation Support's "owners/operators and persons financially responsible," "parties in privity and party representatives," "movants," and "assignees" in an effort to act on that entity's behalf. The filings purported to either seek relief from the original judgment already affirmed by the Fifth Circuit or to "appeal" this Court's orders to the district judge originally assigned to the case. *See* Doc. 88; Doc. 97; Doc. 100; Doc. 101; Doc. 103; Doc. 107; Doc. 109; Doc. 111. These pleadings were not only legally impermissible because Automation Support was not represented by counsel, they were frivolous in every sense, wasting both Defendants' resources as well as the Court's. This activity ultimately led to a number of pleadings being stricken as well as a filing ban. Doc. 91; Doc. 92; Doc. 95; Doc. 102; Doc. 105.

Nevertheless, Automation Support is now back with another Rule 60(b) motion. This time, it has found an attorney to regurgitate the same failed arguments that both this Court and the Fifth Circuit have repeatedly rejected. The Court will not reiterate what it has said before —

Automation Support's arguments fail for the same reasons they always have. As learned counsel should be well aware.

Defendants' response to the Rule 60(b) motion does merit discussion, however, because they seek another award of attorneys' fees as well as a pre-filing injunction to prevent further harassment by Automation Support and those who purport to act on its behalf. Doc. 116. Defendants assert that they are entitled to fees under either the TTLA, as they continue to be prevailing parties, or pursuant to 28 U.S.C. § 1927, which provides for an award of fees directly against counsel. Doc. 116 at 7-8. The Court does not find that the TTLA provides for a continuing award of fees at this stage of the litigation. Moreover, as counsel for Automation Support is relatively new to this case, the undersigned declines *at this juncture* to sanction him financially or otherwise.

However, the Court finds well taken Defendants' request for a pre-filing injunction in this case. Accordingly, due to their continued bad faith conduct, Automation Support, Todd Phillippi, Renee McElheney, Billy McElheney, and *anyone purporting to act on behalf of any of them* are barred from filing any additional documents in this case without first obtaining leave of Court — with the exception of a notice of appeal from this order.

If any attempt is made to file any such document without first obtaining leave of Court, the Clerk is **DIRECTED** to immediately **STRIKE** it from the docket. Any individual or entity found to be in violation of this order will be subject to further sanctions, *including monetary penalties, revocation of electronic filing privileges, referral to the appropriate disciplinary*

authorities, and the like. Finally, Defendants are not required to respond to any further filings in this case, unless directed by the Court to do so.

SO ORDERED on March 11, 2020.

RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

United States Court of Appeals for the Fifth Circuit

No. 20-10386

AUTOMATION SUPPORT, INCORPORATED, *doing business as* TECHNICAL SUPPORT,

Plaintiff—Appellant,

TODD PHILLIPPI,

Movant—Appellant,

versus

HUMBLE DESIGN, L.L.C.; WARREN DAVID HUMBLE,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-4455

Before WIENER, COSTA, and WILLETT, *Circuit Judges*.

PER CURIAM:

This order concerns a motion for an award of attorney's fees by Appellees Humble Design and Warren David Humble for the second unsuccessful appeal brought by Appellants Automation Support and Todd Phillippi. The court's opinion noted that the appellees had the right to obtain

fees, *Automation Support, Inc. v. Humble Design, L.L.C.*, 982 F.3d 392, 395 (5th Cir. 2020). The motion is opposed only by Automation Support.

Beginning with their ill-fated first appeal, *Automation Support, Inc. v. Humble Design, L.L.C.*, 734 F. App'x 211 (5th Cir. 2018), Automation Support and Phillippi have continuously challenged the district court's authority to award statutorily permitted attorney's fees. Our court's initial opinion affirmed the district court's power to award those fees under the Texas Theft Liability Act (TTLA). *Automation Support*, 734 F. App'x at 215-16. Our most recent opinion again underscored the court's ability to award fees and explained that the appellees could also seek fees for this appeal. *Automation Support*, 982 F.3d at 394-95.

The court characterized some arguments advanced by the parties as being in bad faith and indicated that a fee award for the appeal was justified for that reason. *Id.* at 395. But given that this dispute involves multiple appellants, not all of whom put forward these arguments, the simplest path is to award fees based on the TTLA. That statute enables prevailing parties to recover "court costs and reasonable and necessary attorney's fees" regardless of bad faith. TEX. CIV. PRAC. & REM. CODE § 134.005(b). This includes appellate fees as we recognized in awarding appellate fees for the last appeal. *Automation Support*, 734 F. App'x at 216.

The appellees' opposed motion for attorney's fees therefore is GRANTED IN PART. The court has reviewed appellees' billing records and concludes that $20,000 in appellate fees is reasonable. We slightly reduced the fee request to account for some uncovered billing entries, such as time spent reviewing a petition for certiorari to the Supreme Court for the last appeal. Because the appellants made different arguments in this appeal requiring distinct responses, it is reasonable is to hold Automation Support and Phillippi responsible for $10,000 each.

United States Court of Appeals for the Fifth Circuit

No. 20-10386

AUTOMATION SUPPORT, INCORPORATED, *doing business as* TECHNICAL SUPPORT,

Plaintiff—Appellant,

TODD PHILLIPPI,

Movant—Appellant,

versus

HUMBLE DESIGN, L.L.C.; WARREN DAVID HUMBLE,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-4455

ON PETITION FOR REHEARING

Before WIENER, COSTA, and WILLETT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that appellant Todd Phillippi's petition for rehearing is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AUTOMATION SUPPORT, INC. d/b/a TECHNICAL SUPPORT, and SOYOKAZE, INC.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 3:14-cv-04455
	§	JURY
BECKY WALLACE, WARREN DAVID HUMBLE and HUMBLE DESIGN, LLC	§	
Defendants.	§	

JOINT STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE OF PLAINTIFFS' CLAIMS AGAINST DEFENDANTS

COME NOW, Automation Support, Inc. d/b/a Technical Support, and Soyokaze, Inc. ("Plaintiffs") and Warren David Humble and Humble Design, LLC ("Defendants"), and pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), hereby dismiss with prejudice all claims and all associated relief requested in such claims filed in this case by Plaintiffs.

Defendants reserve the right to seek recovery of their attorney's fees and costs from Plaintiffs in accordance with their answer and motion for summary judgment and supporting brief on file herein (Dkt. 34, 46-47).

Respectfully submitted,

/s/ Michael P. Moore

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