

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re POLYURETHANE FOAM ANTITRUST LITIGATION)	MDL Docket No. 2196 Index No. 10-MD-2196 (JZ)
This document relates to:)	
ALL DIRECT PURCHASER CLASS CASES)	

**UNOPPOSED NOTICE OF MOTION AND MOTION TO DISMISS DIRECT
PURCHASER CLASS'S CLAIMS AGAINST LOUIS CARSON AND DAVID CARSON
UNDER FED. R. CIV. P. 41(A)(2)**

The Direct Purchaser Class (“Plaintiffs”) respectfully requests that this Court enter an Order dismissing Plaintiffs’ claims against Louis Carson and David Carson pursuant to Fed. R. Civ. P. 41(a)(2), without prejudice and without costs. Louis Carson and David Carson received for review a substantively identical version of this Motion, and confirmed that they are unopposed to the Motion.

ARGUMENT

At the beginning of this litigation, Plaintiffs filed a Consolidated Amended Complaint (“Complaint”) (Dkt. 46) against numerous Defendants alleging that they participated in a price fixing conspiracy that had the purpose and effect of fixing prices of flexible polyurethane foam and flexible polyurethane products. Among those Defendants were Louis Carson and David Carson (collectively, the “Carsons”), who previously ran the now-defunct co-conspirator, Scottdel. The Carsons were the only individuals named as Defendants in this litigation. Plaintiffs have since voluntarily dismissed or reached settlements with all other Defendants named in the case.

Plaintiffs request dismissal because, as a result of the settlements, any further pursuit of the Carsons would utilize Class and Court resources for no appreciable gain. Neither Carson has substantial assets. Moreover, the foam manufacturer they ran, Scottdel, was placed into receivership and sold off. Pursuing the Carsons when there are no remaining Defendants against whom their testimony and exhibits might help establish liability or damages would therefore be inefficient and wasteful.

Dismissal will benefit the Carsons because they will (a) be able to avoid any further expenses they might have incurred defending this lawsuit, and (b) remove the legal cloud under which they have operated for the past four years. Court approval of dismissal under Fed. R. Civ. P. 41(a)(2) is required in order to protect the non-moving parties from unfair prejudice. *Bridgeport Music, Inc. v. Universal-MCA Music Pub., Inc.*, 583 F.3d 948, 953 (6th Cir. 2009) (“the purpose of Rule 41(a)(2) is to protect the nonmovant[s]...from unfair treatment”). Plaintiffs respectfully submit that this is exactly such a situation where dismissal is warranted. The Carsons will not suffer prejudice from dismissal; they will be freed from liability.

For these reasons, Plaintiffs respectfully request that the Court dismiss the Carsons from this litigation without prejudice. Plaintiffs have attached a proposed order.

DATED: April 30, 2015

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CERTIFICATE OF SERVICE

I hereby certify that, on April 30, 2015, the foregoing NOTICE OF MOTION AND MOTION TO DISMISS DIRECT PURCHASER CLASS'S CLAIMS AGAINST LOUIS CARSON AND DAVID CARSON UNDER FED. R. CIV. P. 41(A)(2) was filed electronically using the Court's ECF system, which will send notification of such filing to counsel of record, and that hard copies of the foregoing were sent to Louis Carson and David Carson at the below addresses via Fed Ex.

David Carson
962 Skar Drive W.
Venice, FL 34293

Louis Carson
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1152 Bernath Parkway
Toledo, OH 43615

/s/ Melissa Felder Zappala

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CERTIFICATION REGARDING PAGE LIMITS

I hereby certify that the foregoing NOTICE OF MOTION AND MOTION TO DISMISS DIRECT PURCHASER CLASS'S CLAIMS AGAINST LOUIS CARSON AND DAVID CARSON UNDER FED. R. CIV. P. 41(A)(2) complies with the page limitations set forth in N.D. Oh. L. R. Civ. 7.1.

/s/ Melissa Felder Zappala

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**[PROPOSED ORDER] DISMISSING DIRECT PURCHASER CLASS’S CLAIMS
AGAINST LOUIS CARSON AND DAVID CARSON UNDER FED. R. CIV. P. 41(A)(2)**

For the reasons set forth in the Motion to Dismiss Direct Purchaser Class’s Claims Against Louis Carson and David Carson Under Fed. R. Civ. P. 41(a)(2), the Direct Purchaser Plaintiff Class’s Claims against Louis Carson and David Carson, set forth in the Consolidated Amended Complaint filed at Docket Number 46, are hereby dismissed without prejudice and without costs.

IT IS SO ORDERED

DATED: April __, 2015

HONORABLE JACK ZOUHARY
U.S. DISTRICT JUDGE