

A plaintiff filed an action in federal district court and served the defendant with the summons and complaint. The defendant moved to dismiss the complaint for failure to state a claim.

Instead of opposing the motion to dismiss, the plaintiff voluntarily dismissed the action and filed a new action alleging the same claims and addressing the pleading defects outlined in the defendant's motion to dismiss. The defendant moved to dismiss the second action, and the plaintiff voluntarily dismissed the second action instead of filing opposition papers.

The plaintiff has filed a third action asserting the same claims and new allegations that are responsive to the defendant's second motion. The defendant has moved to dismiss the third action; the plaintiff opposes the motion.

Is the court likely to grant the defendant's motion?

- A. No, because the plaintiff has promptly and diligently attempted to address the pleading defects.
- B. No, because the plaintiff voluntarily dismissed each previous action before the defendant filed an answer or moved for summary judgment.
- C. Yes, because the plaintiff failed to seek a court order dismissing the second action.
- D. Yes, because the plaintiff's previously dismissed actions asserting the same claims operate as an adjudication on the merits.

### Explanation:

Under Federal Rule of Civil Procedure 41(a), a **plaintiff** may **voluntarily dismiss** a suit without a court order by filing (1) a stipulation of dismissal signed by all the parties or (2) a notice of dismissal before the defendant serves an answer or a summary judgment motion. Here, no court order was required since the plaintiff voluntarily dismissed the first and second actions before an answer or summary judgment motion was filed **(Choice C)**.

A **voluntary dismissal** is generally entered *without* prejudice. This means that the plaintiff can sue the defendant on the same claim in the future. However, a voluntary dismissal is **with prejudice** and operates as an **adjudication on the merits** when stated in an order, notice, or stipulation of dismissal OR the **two-dismissal rule** applies. This rule applies when the plaintiff:

- voluntarily dismissed the **first action** in federal or state court **without a court order** *and*
- voluntarily dismissed the **second action** based on the **same claim** in federal court by filing a **notice of dismissal**.

Here, the plaintiff likely dismissed both actions by a notice of dismissal since there is no indication that the court issued an order or the parties signed a stipulation. Since these actions asserted the same claims, the second dismissal operated as an adjudication on the merits. Therefore, the court will likely grant the defendant's motion to dismiss the third action.

**(Choice A)** The fact that the plaintiff has promptly and diligently attempted to address the pleading defects raised by the defendant does not affect the application of the two-dismissal rule.

**(Choice B)** Although the plaintiff voluntarily dismissed each previous action before the defendant filed an answer or moved for summary judgment, the two-dismissal rule still bars the third action.

### Educational objective:

Under the two-dismissal rule, a voluntary dismissal of a second action operates as an adjudication on the merits when the plaintiff voluntarily dismissed (1) the first action in federal or state court without a court order *and* (2) the second action based on the same claim in federal court by filing a notice of dismissal.

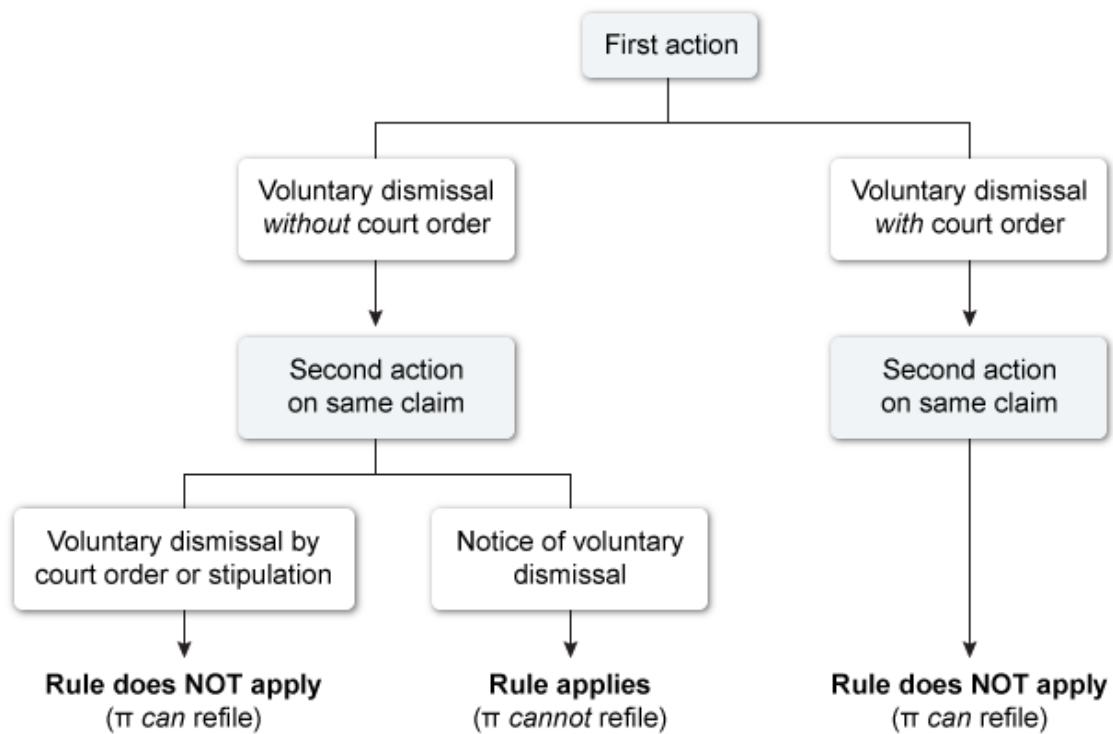
### References

- Fed. R. Civ. P. 41(a) (voluntary dismissals).

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## Two-dismissal rule on voluntary dismissals



$\pi$  = plaintiff

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