

A purchaser of a luxury car sued the car's manufacturer in a state court in State A. The purchaser claimed that the steering wheel was defective and caused a car accident resulting in over \$300,000 in damages. Before the manufacturer responded, the purchaser filed a notice of dismissal.

Two weeks later, the purchaser filed a complaint in a federal court in State B against the manufacturer for the same claim. The manufacturer filed an answer that included a motion to dismiss for lack of venue. The purchaser did not oppose this motion, but she did file a stipulation of dismissal signed by both parties.

One month later, the purchaser filed a complaint in a federal court in State C alleging the same claim asserted in the prior actions. The manufacturer moved to dismiss the suit, arguing that the purchaser was precluded from bringing this suit a third time.

Will the court likely grant the manufacturer's motion to dismiss?

- A. No, because a voluntary dismissal is with prejudice only when specified in a court order.
- B. No, because the second action was dismissed by a stipulation signed by both parties.
- C. Yes, because the purchaser failed to obtain a court order to dismiss the second action.
- D. Yes, because the second dismissal occurred in federal court.

## Explanation:

A **plaintiff** may voluntarily dismiss a suit for any reason. A **voluntary dismissal** is generally *without* prejudice, which allows the plaintiff to sue the defendant again on the same claim. But a voluntary dismissal is **with prejudice** and operates as an **adjudication on the merits** when specified in a court order, notice, or stipulation OR the **two-dismissal rule** applies (**Choice A**). This rule applies when:

- the plaintiff's **first action** was **voluntarily dismissed** without a court order in state or federal court *and*
- the plaintiff brought a **second action** on the same claim **in federal court** and filed a **notice of voluntary dismissal**.\*

Here, the purchaser dismissed the first action by a notice of dismissal and then dismissed the second action asserting the same claim by a stipulation in federal court. However, the second dismissal did not operate as an adjudication on the merits because it was dismissed by the parties' signed stipulation—not a notice of voluntary dismissal. Therefore, the two-dismissal rule does not apply, and the court will likely deny the manufacturer's motion to dismiss the purchaser's third action.

\*The two-dismissal rule's purpose is to prevent the plaintiff from harassing the defendant by perpetually filing and dismissing the same claim. Since a court order or stipulation does not pose this risk, the rule does not apply when the second action is dismissed by these methods.

**(Choice C)** A voluntary dismissal without a court order is permitted when the plaintiff files (1) a notice of dismissal before the defendant serves an answer or a summary judgment motion or (2) a stipulation of dismissal that has been signed by all parties (as seen here).

**(Choice D)** The two-dismissal rule requires that the second dismissal occur in federal court and be pursuant to a *notice of voluntary dismissal*. But here, the second dismissal was pursuant to the parties' *signed stipulation*, so this rule does not apply.

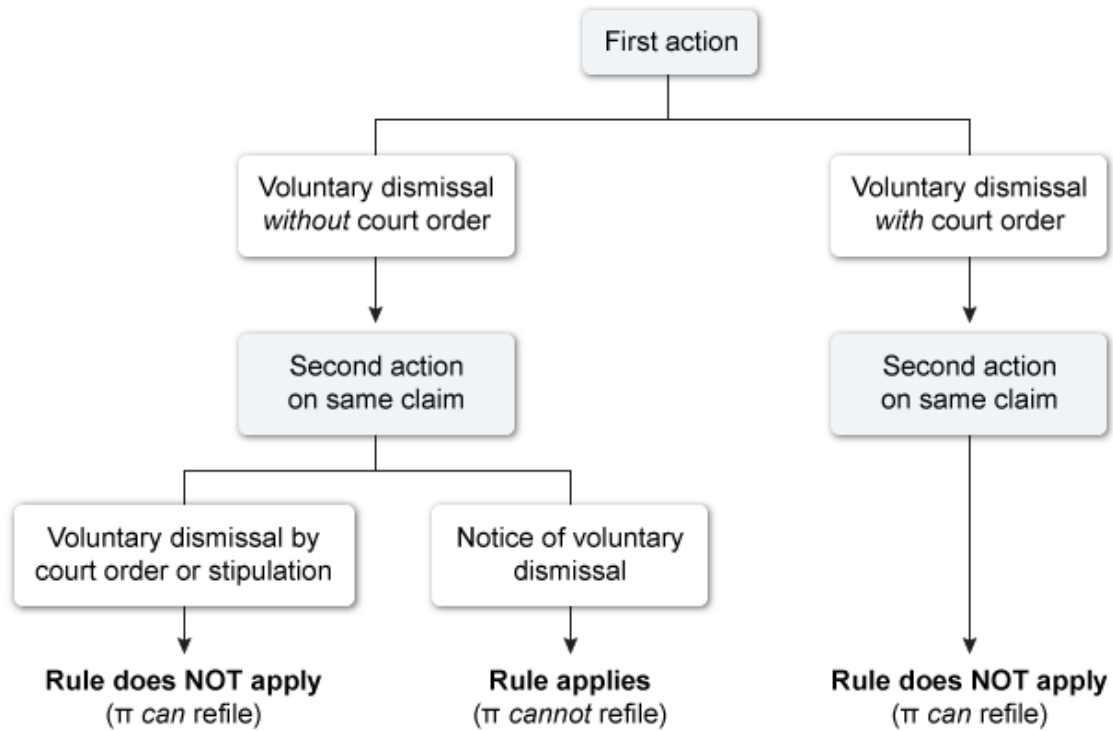
## Educational objective:

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

## References

- Fed. R. Civ. P. 41(a) (voluntary dismissals).
- 24 Am. Jur. 2d Dismissal, Discontinuance, and Nonsuit § 95 (2019) (explaining that the two-dismissal rule does not apply when the second action was dismissed by the parties' stipulation).

## Two-dismissal rule on voluntary dismissals



π = plaintiff