

A farmer sued a seed supplier in federal district court for allegedly selling the farmer's patented seeds without the farmer's permission. The supplier filed and served an answer denying liability, and the court entered a scheduling order with discovery deadlines.

Over the next year, the supplier repeatedly tried to contact the farmer through phone calls, regular mail, and email. The supplier also sent several discovery requests to the farmer. The farmer never responded to the supplier, made no discovery requests, and failed to adhere to the discovery deadlines. The supplier wants to end this litigation and prevent the farmer from suing her on the same claim in the future.

Which action will best achieve the supplier's goals?

- A. Move for a voluntary dismissal with prejudice.
- B. Move for a voluntary dismissal without prejudice.
- C. Move for an involuntary dismissal with prejudice.
- D. Move for an involuntary dismissal without prejudice.

## Explanation:

### Voluntary v. Involuntary dismissal

(FRCP 41)

	Process	Effect
<b>Voluntary dismissal</b>	<p><math>\pi</math> may dismiss suit without court order when:</p> <ul style="list-style-type: none"><li>• notice of dismissal filed before <math>\Delta</math> serves answer or summary judgment motion <i>or</i></li><li>• all parties sign stipulation of dismissal</li></ul> <p><math>\pi</math> may request court order to dismiss suit unless:</p> <ul style="list-style-type: none"><li>• <math>\Delta</math>'s counterclaim cannot be independently adjudicated</li></ul>	<p>Dismissal <i>without</i> prejudice unless:</p> <ul style="list-style-type: none"><li>• <math>\pi</math> previously dismissed federal or state action based on same claim <i>or</i></li><li>• notice or stipulation states otherwise</li></ul>
<b>Involuntary dismissal</b>	<p><math>\Delta</math> may move to dismiss suit if <math>\pi</math> failed to:</p> <ul style="list-style-type: none"><li>• prosecute own action <i>or</i></li><li>• comply with rules or court order</li></ul> <p><math>\Delta</math> may move to dismiss suit via:</p> <ul style="list-style-type: none"><li>• pre-answer motion</li><li>• judgment on the pleadings <i>or</i></li><li>• summary judgment</li></ul>	<p>Dismissal <i>with</i> prejudice unless:</p> <ul style="list-style-type: none"><li>• court order states otherwise <i>or</i></li><li>• based on lack of jurisdiction, improper venue, or failure to join required party</li></ul>

**FRCP** = Federal Rule of Civil Procedure;  $\pi$  = plaintiff;  $\Delta$  = defendant.

Under Federal Rule of Civil Procedure (FRCP) 41, a **suit can be dismissed** in two ways:

- **Voluntary** dismissal – when the ***plaintiff moves*** to dismiss the suit
- **Involuntary** dismissal – when the ***defendant moves*** to dismiss the suit

A defendant can move for an involuntary dismissal under FRCP 41\* if the plaintiff failed to prosecute the action or comply with a rule or court order—just as the farmer (plaintiff) did here. Therefore, the supplier (defendant) can move for an involuntary dismissal (**Choices A & B**).

An **involuntary dismissal** under **FRCP 41** operates as an adjudication on the merits unless the court orders otherwise. This means that the plaintiff's action is dismissed **with prejudice**, which **precludes** the plaintiff from **suing the defendant** on the **same claim in the future**. The supplier should therefore move for an involuntary dismissal *with* prejudice to end the suit and prevent the farmer from suing her again on the same claim **(Choice D)**.

\*A defendant may also move for an involuntary dismissal through other rules (eg, pre-answer motion to dismiss under FRCP 12). An involuntary dismissal based on lack of jurisdiction, improper venue, or failure to join a required party is without prejudice.

#### **Educational objective:**

A defendant can move for an involuntary dismissal if the plaintiff failed to prosecute the case or comply with a rule or court order. If the motion is granted, the case will be dismissed *with* prejudice (unless the court states otherwise) to prevent the plaintiff from suing the defendant on the same claim in the future.

#### **References**

- Fed. R. Civ. P. 41(b) (involuntary dismissal).