

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12	VICTORY RENEWABLES, LLC,)	CV 19-1661-RSWL-E
13	Plaintiff,)	
14)	ORDER re: Plaintiff's
15	v.)	Motion to Dismiss [59]
16	ENERGY TRADING CO., LLC,)	
17)	
18	Defendant.)	
19)	
20)	

21 Plaintiff Victory Renewables, LLC ("Plaintiff")
 22 brings this Action against Defendant Energy Trading
 23 Company, LLC ("Defendant") for quantum meruit and
 24 breach of contract claims regarding a series of alleged
 25 nonpayments by Defendant. Before the Court is
 26 Plaintiff's Motion to Dismiss ("Motion") [59]. Having
 27 reviewed all papers submitted pertaining to this
 28 Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the

1 Court **GRANTS** Plaintiff's Motion.

2 **I. BACKGROUND**

3 **A. Factual Background**

4 Plaintiff is a Kansas limited liability company,
5 whose principal place of business is located in
6 Southlake, Texas. Compl. ¶ 2, ECF No. 1. Defendant is
7 a Delaware limited liability company, whose principal
8 place of business is located in Long Beach, California.
9 Answer ¶ 2, ECF No. 15.

10 VicNRG, LLC ("VicNRG") was a leading marketing,
11 distribution, and terminal operating company for
12 biodiesel, a type of diesel fuel. Pl.'s Mot. to
13 Dismiss ("Mot.") ¶¶ 2-3, ECF No. 59. On March 10,
14 2017, Plaintiff entered into an "Asset Purchase
15 Agreement" with VicNRG, in which VicNRG sold its assets
16 and liabilities to Plaintiff. Id. ¶ 5. As part of the
17 Asset Purchase Agreement, Plaintiff and VicNRG also
18 entered into a "Transition Services Agreement", in
19 which VicNRG agreed to continue to operate part of the
20 biodiesel business until Plaintiff could obtain various
21 permits, licenses, and consents required to assume
22 operations in full. Id. ¶¶ 6-7. During this
23 transitional period, VicNRG entered into three sales
24 agreements ("Sales Agreements") with Defendant for the
25 delivery and purchase of biodiesel. Id. ¶ 9.
26 Plaintiff avers that pursuant to the Sales Agreements,
27 it delivered biodiesel to Defendant more than two
28 hundred and forty times. Id. ¶ 12. Plaintiff brings

1 this Action arguing that Defendant has not paid, and
2 has refused to pay, Plaintiff for the value of the
3 biodiesel. Compl. ¶ 6.

4 **B. Procedural Background**

5 Plaintiff filed the Complaint [1] in the United
6 States District Court for the Northern District of
7 Texas, Dallas Division, on February 23, 2018. On March
8 6, 2019, the Action was transferred to this Court [46].
9 Plaintiff filed the current Motion to Dismiss [59] on
10 June 14, 2019. Defendant has not filed an opposition.

11 **II. DISCUSSION**

12 **A. Legal Standard**

13 A plaintiff may voluntarily dismiss an action
14 without a court order by filing "(i) a notice of
15 dismissal before the opposing party serves either an
16 answer or a motion for summary judgment; or (ii) a
17 stipulation of dismissal signed by all parties who have
18 appeared." Fed. R. Civ. P. 41(a)(1)(A). Otherwise,
19 "an action may be dismissed at the plaintiff's request
20 only by court order, on terms that the court considers
21 proper." Fed. R. Civ. P. 41(a)(2). "If a defendant
22 has pleaded a counterclaim before being served with the
23 plaintiff's motion to dismiss, the action may be
24 dismissed over the defendant's objection only if the
25 counterclaim can remain pending for independent
26 adjudication." Id.

27 "A district court should grant a motion for
28 voluntary dismissal under Rule 41(a)(2) unless a

1 defendant can show that it will suffer some plain legal
2 prejudice as a result." Smith v. Lenches, 263 F.3d
3 972, 975 (9th Cir. 2001) (footnote and citations
4 omitted). Legal prejudice is defined as "prejudice to
5 some legal interest, some legal claim, [or] some legal
6 argument." Westlands Water Dist. v. United States, 100
7 F.3d 94, 97 (9th Cir. 1996). Uncertainty because a
8 dispute remains unresolved or uncertainty caused by the
9 threat of future litigation does not constitute plain
10 legal prejudice. Id. at 96-97.

11 **B. Discussion**

12 Central District of California Local Rule 7-9
13 requires an opposing party to file an opposition or
14 statement of non-opposition to a motion "not later than
15 ten (10) days after service of the motion in the
16 instance of a new trial motion and not later than
17 twenty-one (21) days before the date designated for the
18 hearing of the motion in all other instances"
19 C.D. Cal. L.R. 7-9. "[F]ailure to file any required
20 document . . . may be deemed consent to the granting or
21 denial of the motion" C.D. Cal. L.R. 7-12; see
22 Irvin v. Madrid, 749 F. App'x 546, 547 (9th Cir. 2019)
23 (affirming dismissal on the basis of an unopposed
24 motion pursuant to California Local Rule 7-12).

25 Here, the hearing on Plaintiff's Motion to Dismiss
26 was scheduled for July 16, 2019. Defendant's
27 Opposition or Statement of Non-opposition was therefore
28 due by June 25, 2019. As of the date of this

1 memorandum, Defendant has not filed an opposition or
2 any other papers to continue the hearing date. The
3 Court deems Defendant's failure to file an opposition
4 as consent to granting the Motion. Cf. Alipot v. Aurora
5 Loan Servs., LLC, No. CV 09-08431 DDP (EX), 2010 WL
6 365975, at *1 (C.D. Cal. Jan. 25, 2010) ("[T]he Court
7 deems Plaintiff's failure to oppose consent to granting
8 Defendant's Motion to Dismiss."). Moreover, Defendant
9 has not filed a counterclaim in this Action, nor
10 identified any legal prejudice it would suffer if the
11 Action were dismissed. As such, the Court **GRANTS**
12 Plaintiff's Motion.

13 **III. CONCLUSION**

14 Based on the foregoing, the Court **GRANTS**
15 Plaintiff's Motion to Dismiss without prejudice.¹

16
17 **IT IS SO ORDERED.**

18
19 DATED: August 20, 2019

s/ RONALD S.W. LEW

20 **HONORABLE RONALD S.W. LEW**
21 Senior U.S. District Judge

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23
24
25 ¹ Plaintiff's Proposed Order contains language indicating
26 that the Court should dismiss the Action so "that Plaintiff may
27 pursue its rights under the arbitration provision of the [Sales]
28 [A]greements with the Defendant in Southlake, Texas." ECF No.
59-1. Neither the validity of the arbitration provision, nor a
motion to compel arbitration, is before the Court. Thus, the
Court declines to rule on whether Plaintiff may pursue its rights
in arbitration with Defendant in Southlake, Texas.