

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-cv-01625-CMA-SKC

DAVE YOUNGBLOOD and
DON STEINBACH,
Individually and on behalf of all others similarly-situated,

Plaintiffs

v.

MATRIX TRUST COMPANY,

Defendant

**PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL WITHOUT
PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(1)(A)(i)**

Pursuant to FED. R. CIV. P. 41(a)(1)(A)(i), Plaintiffs Dave Youngblood and Don Steinbach ("Plaintiffs"), individually and on behalf of all others similarly-situated, hereby dismiss their action against Defendant Matrix Trust Company ("Defendant" or "Matrix") without prejudice, with each party to bear its own costs, attorneys' fees, and expenses.

Defendant Matrix has not filed either an answer or a motion for summary judgment in this matter. Defendant has filed FED. R. CIV. P. 12(b)(6) Motions to Dismiss for Failure to State a Claim in response to Plaintiffs' initial and amended Class Complaints. *See* Dkt. No. 12 and No. 26. Under FED. R. CIV. P. 12(d), a Rule 12(b)(6) Motion to Dismiss is considered a Motion for Summary Judgment if "matters outside the pleading are presented to and not excluded by the court." *See Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1216 (10th Cir. 2007). "There is no requirement, however, that a court automatically convert a motion to dismiss to a motion for summary judgment simply because one or both parties file documents in connection with a

motion to dismiss.” *PayoutOne v. Coral Mortg. Bankers*, 602 F.Supp.2d 1219, 1227 (D. Colo. 2009). This Court has not considered Defendant’s Motion to Dismiss nor converted it into a Motion for Summary Judgment. Therefore, Plaintiffs retain their absolute right to voluntarily dismiss this case by notice without prejudice under FED. R. CIV. P. 41(a)(1)(A)(i), and do so now.

Under FED. R. CIV. P. 41(a)(1)(A)(i), this Notice is self-effecting and results in the dismissal of Plaintiffs’ action against Matrix upon filing.

Dated: November 16, 2018

Respectfully submitted,

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

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**ATTORNEYS FOR PLAINTIFFS, DAVE
YOUNGBLOOD, DON STEINBACH AND THE
PUTATIVE CLASS**

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, a true and correct copy of the foregoing document was forwarded via the Court's Electronic Filing System to all counsel.

/s/ Terri M. Novoa
Terri M. Novoa