

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PHIL BERGER, et al.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE, et al.,

Defendants.

Case No. 1:16-cv-00844-TDS-JEP

**NOTICE OF VOLUNTARY DISMISSAL**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), the Plaintiffs in *Berger v. United States Department of Justice, et al.*, No.1:16CV844 (“*Berger*”), voluntarily dismiss their action without prejudice, and state as follows.

1. Since the filing of the *Berger* complaint on May 9, 2016, the Defendants have not served an answer or a motion for summary judgment.

2. On July 22, 2016, the parties in *Berger* filed a joint notice stating that the Plaintiffs “agree to voluntarily dismiss their complaint, in view of the fact that, as intervenor-defendants, they are pursuing the same claims and relief via counter-claims in *United States of America v. North Carolina, et al.*, No. 1:16CV425.” Doc. #106, at 2-3. The joint notice further stated that “[t]he United States reserves the right to seek dismissal of the intervenor-defendants’ counter-claims on all grounds other than on the grounds

that the counter-claims are duplicative of the claims for relief sought by the United States.” *Id.* at 3.

3. Consequently, the Plaintiffs hereby voluntarily dismiss the *Berger* action without prejudice.

Respectfully Submitted, this 28th day of July, 2016,

/s/ S. Kyle Duncan

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/s/ Robert D. Potter, Jr.

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## CERTIFICATE OF SERVICE

I certify that on July 28, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all registered parties.

Dated: July 28, 2016

/s/ S. Kyle Duncan  
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