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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

<b>ROSEMARY SMITH, et al.,</b>	)	<b>1:05-CV-1594 AWI DLB</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER ADOPTING FINDINGS AND</b>
	)	<b>RECOMMENDATION</b>
<b>v.</b>	)	
	)	<b>ORDER DISMISSING ACTION</b>
<b>PFIZER, INC., et al.,</b>	)	
	)	<b>(Document #24)</b>
<b>Defendants.</b>	)	

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Plaintiffs Rosemary Smith, Ricky E. Smith and Charles K. Smith are proceeding pro se in this product liability action filed on December 16, 2005. On April 18, 2006, the action was transferred to the United States District Court for the District of Massachusetts pursuant to an order of the Judicial Panel on Multi-District Litigation. The action was transferred back to this court on May 24, 2011, after the completion of consolidated pretrial proceedings and discovery.

The Magistrate Judge ordered the parties to appear at a Status Conference on June 20, 2011. While an attorney representing Defendants appeared, Plaintiffs failed to appear at the Status Conference

On June 21, 2011, the Magistrate Judge ordered Plaintiffs to show cause why this action should not be dismissed for Plaintiffs' failure to appear at the June 20, 2011 Status Conference. The Magistrate Judge then ordered Plaintiffs to appear on August 12, 2011, at 9:00 a.m., in Courtroom 9.

On August 12, 2011, the Magistrate Judge held the hearing on the order to show cause Plaintiffs Rosemary Smith, Ricky E. Smith and Charles K. Smith personally appeared.

1 Catherine Valerio Barrad appeared telephonically on behalf of Defendants. During the hearing,  
2 the individual plaintiffs expressed to the court that they wanted to dismiss the this action with  
3 each party agreeing to bear its own attorney fees and costs. Defendants had no objection to  
4 dismissal.

5 On August 12, 2011, the Magistrate Judge filed Findings and Recommendations,  
6 recommending that this action be dismissed in its entirety, with each party to bear its own  
7 attorneys' fees and costs, based on the parties' agreement at the August 12, 2011 hearing. The  
8 Findings and Recommendations gave notice that the parties could file objections within fourteen  
9 (14) days. No objections the Findings and Recommendations have been filed.

10 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)C) this court has conducted a  
11 review of this case. As to any portion of the Findings and Recommendations that contain  
12 findings of fact and to which no objection has been made, the court assumes its correctness and  
13 decides the motion on the applicable law. Orand v. United States, 602 F.2d 207, 208 (9<sup>th</sup> Cir.  
14 1979); Campbell v. United States Dist. Court, 501 F.2d 196 (9<sup>th</sup> Cir. 1974). The failure to object  
15 in the District Court to a Magistrate Judge's finding of fact waives a later challenge to that  
16 finding. In re Grand Jury Subpoena (Mark Torf/Torf Environmental Management) 357 F.3d 900,  
17 903 (9<sup>th</sup> Cir. 2004); Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Having carefully  
18 reviewed the entire file, the court finds the Findings and Recommendations to be supported by  
19 the record.

20 Rule 41(a)(1) of the Federal Rules of Civil Procedures allows an action to be dismissed if  
21 all parties who have appeared in the action file a signed stipulation of dismissal. Rule 41(a)(1)  
22 allows the parties to dismiss an action voluntarily by filing a written stipulation to dismiss,  
23 although an oral stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan  
24 Asso., 884 F.2d 1186, 1191 (9<sup>th</sup> Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9<sup>th</sup> Cir.  
25 1986). Here, the parties agreed on the record in open court to dismiss this action. Thus, Rule  
26 41(a)(1) is satisfied.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations filed on August 12, 2011 are ADOPTED IN FULL;
2. This action is DISMISSED IN ITS ENTIRETY, with each party to bear its own attorneys' fees and costs.

IT IS SO ORDERED.

Dated: October 31, 2011

  
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CHIEF UNITED STATES DISTRICT JUDGE