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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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10 J & J Sports Productions, Inc.,

11 Plaintiff,

12 vs.

13 Martin Garcia Velazquez, et al.,

14 Defendants.
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No. CV-13-01123-PHX-PGR

ORDER

16 Pending before the Court is the parties' Stipulation of Dismissal of Plaintiff's
17 Complaint Against Defendants Martin Garcia Velazquez, individually and d/b/a Los
18 Tucanes Mexican Food; and Los Tucanes Mexican Food, LLC, an unknown
19 business entity d/b/a Los Tucanes Mexican Food (Doc. 15). Having considered the
20 stipulation, which the parties state is made pursuant to Fed.R.Civ.P. 41(a)(1), the
21 Court finds that the stipulation is insufficient to automatically effect the dismissal of
22 this action pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii) because it specifically conditions
23 its effectiveness on a subsequent occurrence. See Anago Franchising, Inc. v. Shaz,
24 LLC, 677 F.3d 1272 (11th Cir.2012).

25 The stipulation states that the dismissal of the action is without prejudice
26 "subject to the Court's jurisdiction to enforce the settlement agreement reached by

1 the Parties[,]" which retention of jurisdiction is apparently needed because the
2 parties also stipulated that the dismissal would be with prejudice if "no Party
3 referenced above has filed a motion to reopen this action by August 20, 2014[.]" The
4 Court finds this to be unacceptable because Rule 41(a)(1) does not permit parties
5 to reopen an existing action after it has been dismissed, and because the stipulation
6 provides no reason why the Court should retain jurisdiction over the parties'
7 settlement agreement and the Court, in the exercise of its discretion, declines to do
8 so.¹ See Arata v. Nu Skin International, Inc., 96 F.3d 1265, 1269 (9th Cir.1996)
9 ("[T]he mere fact that the parties agree that the court should exercising continuing
10 jurisdiction [over a settlement agreement] is not binding on the court.")

11 Furthermore, the stipulation is in any case ineffective to effectuate the
12 dismissal of defendant Los Tucanes Mexican Food, LLC because the stipulation was
13 signed on that defendant's behalf by defendant Martin Garcia Velazquez, a non-
14 attorney, as the company's "authorized representative" notwithstanding that it is well-
15 established that a non-attorney may not appear in federal court on behalf of a limited
16 liability company. See Lattanzio v. COMTA, 481 F.3d 137, 140 (2nd Cir. 2007) (Court
17 held that a limited liability company, even one solely-owned, may appear in federal
18 court only through a licensed attorney.) Therefore,

19 IT IS ORDERED that the parties' Stipulation of Dismissal of Plaintiff's
20 Complaint Against Defendants Martin Garcia Velazquez, individually and d/b/a Los
21 Tucanes Mexican Food; and Los Tucanes Mexican Food, LLC, an unknown
22 business entity d/b/a Los Tucanes Mexican Food (Doc. 15) is rejected by the Court

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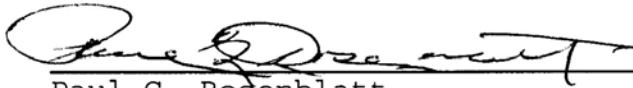
25 While the Court realizes that it has accepted this type of stipulation
26 provision in the past from the plaintiff's counsel without comment, the Court is no
longer willing to do so.

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without prejudice.

IT IS FURTHER ORDERED that an appropriate stipulation of dismissal or an appropriate notice of voluntary dismissal shall be filed no later than October 31, 2013.

DATED this 4th day of October, 2013.



Paul G. Rosenblatt
United States District Judge