

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
4

5 SHELLY IOANE,

6 Plaintiff,

7 v.

8 JEAN NOLL,

9 Defendant.
10

Case No. 1:07-cv-00620 AWI EPG

**ORDER DISMISSING CASE WITH
PREJUDICE**

11 Plaintiff Shelly Ioane is formally represented by attorney Peter Borenstein. In response to
12 a court minute order, Mr. Borenstein made a filing on April 15, 2022, which stated that “I no
13 longer represent Plaintiff Shelly Ioane. The representation ended in June 2021. Since that time, it
14 has been my understanding that Mrs. Ioane was seeking to retain new counsel to proceed with this
15 case.” Doc. 609. On April 18, 2022, Magistrate Judge Grosjean issued an order directing Mr.
16 Borenstein to file a motion to withdraw within fourteen (14) days. Doc. 610. Twenty eight (28)
17 days have passed and Mr. Borenstein has not neither filed the motion nor contacted the court in
18 any way.
19

20 Instead, on April 21, 2022, Plaintiff Ioane herself filed a “Notice of Voluntary Dismissal”
21 in which she stated that “pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Shelly Ioane
22 voluntarily dismisses the above-captioned action with prejudice.” Doc. 611. On April 21, 2022,
23 Defendant Jean Noll filed a notice that she wished to “stipulate to a request of Plaintiff to dismiss
24 this action, with prejudice” but was not sure how the unresolves status of Mr. Borenstein affected
25 the situation. Doc. 612.
26

27 Federal Rule of Civil Procedure 41(a)(2) allows for a court to order a case’s dismissal if a
28 plaintiff expresses that desire: “Except as provided in Rule 41(a)(1), an action may be dismissed

1 at the plaintiff's request only by court order, on terms that the court considers proper." Given the
2 lack of cooperation from Mr. Borenstein, proceeding under this provision seems appropriate. To
3 save all parties from further unnecessary expense, Plaintiff Ioane's filing is deemed to be a valid
4 request to dismiss under Fed. R. Civ. Proc. 41(a)(2). Plaintiff Ioane requests dismissal with
5 prejudice and Defendant Noll agrees with that resolution of the case. Docs. 611 and 612. "[T]he
6 decision to grant a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of
7 the District Court." Hamilton v. Firestone Tire & Rubber Co., 679 F.2d 143, 145 (9th Cir. 1982),
8 citations omitted. In this circumstance, when both parties plainly wish to bring the suit to a clear
9 end without further procedural hurdles, Plaintiff Ioane's request should be granted.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff Shelly Ioane's Rule 41(a)(2) request to dismiss the case with prejudice is
13 GRANTED.
- 14 2. The Clerk shall CLOSE this case.

17 IT IS SO ORDERED.

18 Dated: May 17, 2022

19 
20 SENIOR DISTRICT JUDGE