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5 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **AMERICAN GENERAL LIFE** )  
9 **INSURANCE COMPANY,** )

10 **Plaintiff,** )

11 **v.** )

12 **FAUSTO FERNANDEZ, et al.,** )

13 **Defendants.** )  
14

**NO. 1:08-CV-01470-AWI-DLB**

**ORDER DISMISSING**  
**DEFENDANTS NELIA LOPEZ**  
**AND BRIAN BUCHANAN**  
**ONLY WITHOUT PREJUDICE**  
**IN LIGHT OF STIPULATION**  
**OF DISMISSAL**

15 On April 2, 2009, the Plaintiff filed a stipulation of dismissal of Defendants Nelia Lopez  
16 and Brian Buchanan only, without prejudice, pursuant to Rule 41(a)(1)(ii). The stipulation is  
17 signed by all parties in this case.

18 Rule 41(a)(1), in relevant part, reads:

19 an action may be dismissed by the plaintiff without order of court (i) by filing a  
20 notice of dismissal at any time before service by the adverse party of an answer or  
21 of a motion for summary judgment, whichever first occurs, or (ii) by filing a  
22 stipulation of dismissal signed by all parties who have appeared in the action.  
23 Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is  
24 without prejudice, except that a notice of dismissal operates as an adjudication  
25 upon the merits when filed by a plaintiff who has once dismissed in any court of  
26 the United States or of any state an action based on or including the same claim.

27 Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily after service of an  
28 answer by filing a written stipulation to dismiss signed by all of the parties, although an oral  
stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d  
1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the  
stipulation between the parties who have appeared is properly filed or made in open court, no

1 order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); Eitel, 782  
2 F.2d at 1473 n.4. “Caselaw concerning stipulated dismissals under Rule 41(a) (1) (ii) is clear  
3 that the entry of such a stipulation of dismissal is effective automatically and does not require  
4 judicial approval.” In re Wolf, 842 F.2d 464, 466 (D.C. Cir. 1989); Gardiner v. A.H. Robins Co.,  
5 747 F.2d 1180, 1189 (8th Cir. 1984); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 139  
6 (2d Cir. 2004); Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1077 (9th Cir.  
7 1999) cf. Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997) (addressing 41(a)(1)(i)).  
8 “The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a  
9 Rule 41(a)(1) notice,” and the dismissal “automatically terminates the action as to the defendants  
10 who are the subjects of the notice.” Wilson, 111 F.3d at 692; Concha v. London, 62 F.3d 1493,  
11 1506 (9th Cir. 1995).

12 Because the parties have filed a voluntary dismissal under Rule 41(a)(1)(ii) as to only  
13 Defendants Nelia Lopez and Brian Buchanan that is signed by all parties who have made an  
14 appearance, this case has terminated as to Defendants Nelia Lopez and Brian Buchanan only.  
15 See Fed. R. Civ. Pro. 41(a)(1)(ii); In re Wolf, 842 F.2d at 466; Gardiner, 747 F.2d at 1189; see  
16 also Gambale, 377 F.3d at 139; Commercial Space Mgmt, 193 F.3d at 1077; cf. Wilson, 111  
17 F.3d at 692.

18 Therefore, IT IS HEREBY ORDERED that Defendants Nelia Lopez and Brian Buchanan,  
19 are DISMISSED from this case without prejudice in light of the parties’s filed and properly  
20 signed Rule 41(a)(1) voluntary dismissal.

21  
22 IT IS SO ORDERED.

23 **Dated:** April 7, 2009

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE