

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **THE VIOLA M. COPPOLA**
9 **IRREVOCABLE TRUST, et al.,**

10 **Plaintiff**

11 **v.**

12 **PARAGON CLEANERS, INC., et al.,**

13 **Defendants**

14 _____
15 **AND RELATED CLAIMS**

CASE NO. 1:11-CV-1257 AWI BAM

**ORDER DISMISS DEFENDANTS
HARLEY MILLER AND CHERYL
MILLER IN LIGHT OF UNOPPOSED
REQUEST TO DISMISS**

(Doc. No. 356)

16
17 This is a complex CERCLA case involving a contamination plume in Visalia, California.
18 On December 29, 2015, Plaintiffs filed a notice of voluntary dismissal without prejudice of Harley
19 Miller and Cheryl Miller. See Doc. No. 356. Although other parties have filled answers and other
20 pleadings, these individuals have not appeared in this case. Nearly 30 days have now passed since
21 Plaintiffs' notice of dismissal, and no party responded to it.

22 Federal Rule of Civil Procedure 41(a) "allows plaintiffs voluntarily to dismiss some or all
23 of their claims against some or all defendants." Romoland Sch. Dist. v. Inland Empire Energy
24 Ctr., LLC, 548 F.3d 738, 748 (9th Cir. 2008). Where a defendant has served an answer, but has
25 not signed a stipulation to dismiss, a plaintiff's voluntary dismissal must be effected through
26 Federal Rule of Civil Procedure 41(a)(2). See Fed. R. Civ. Pro. 41(a); Wilson v. City of San Jose,
27 111 F.3d 688, 692 (9th Cir. 1999). Rule 41(a)(2) provides in pertinent part: "Except as provided
28 in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on

1 terms that the court considers proper.” Fed. R. Civ. Pro. 41(a)(2). “A district court should grant a
2 motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer
3 some plain legal prejudice as a result.” Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001).

4 Here, neither Harley Miller nor Cheryl Miller have appeared, and no other defendant or
5 party has objected or responded to Plaintiffs’ requested dismissal. Given the time that has now
6 passed, the Court will view Plaintiffs’ request as being unopposed. The Court sees no reason to
7 deny Plaintiffs’ requested dismissal without prejudice. See Fed. R. Civ. Pro. 41(a)(2); Smith, 263
8 F.3d at 975.

9
10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Pursuant to Rule 41(a)(2), Plaintiffs’ requested dismissal without prejudice of
12 Harley Miller and Cheryl Miller (Doc. No. 356) is GRANTED; and
- 13 2. Defendants Harley Miller and Cheryl Miller are DISMISSED from this action.

14
15 IT IS SO ORDERED.

16 Dated: January 25, 2016


17
18
19
20
21
22
23
24
25
26
27
28
SENIOR DISTRICT JUDGE