

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

EVA DIGMAN and RED CANYON
TRANSPORT, LLC,

Plaintiffs,

v.

BRIAN CUMMINGS, et al.

Defendants.

NO. 1:11-CV-01901 AWI SKO

ORDER DISMISSING AND
CLOSING CASE IN LIGHT OF
PLAINTIFFS' REQUEST FOR
DISMISSAL

On July 9, 2012, Plaintiffs filed their notice of dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). However, Plaintiffs' request was not signed by Defendants who have filed an answer. Therefore, Rule 41(a)(1) does not apply. See Federal Rule of Civil Procedure 41(a)(1)(A)(i).

However, Plaintiffs filed their request on July 9, 2012 and Defendants have yet to respond. The Court considers Plaintiffs' motion as a request for dismissal under Rule 41(a)(2).

Rule 41(a)(2) of the Federal Rules of Civil Procedure provides:

Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice

Fed. R. Civ. Pro. 41(a)(2).

1 Defendants have not filed a counterclaim and the Court sees no prejudice against
2 Defendants by dismissing this case. Given the absence of any response by, or prejudice, to
3 Defendants, the Court will dismiss this case under Rule 41(a)(2).

4 Accordingly, IT IS HEREBY ORDERED that:

5 This case is DISMISSED in its entirety, without prejudice, pursuant to Rule 41(a)(2); and
6 all other pending motions are DENIED as moot.

7 The Clerk of the court is ordered to close this case.

8
9 IT IS SO ORDERED.

10 Dated: July 20, 2012

11 
12 _____
13 CHIEF UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27