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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PENN-STAR INSURANCE COMPANY,

Plaintiff,

v.

TRINITY LOGISTICS GROUP, INC. et
al.,

Defendants.

No. 1:15-cv-00931-DAD-EPG

ORDER DIRECTING THE CLERK OF THE
COURT TO TERMINATE PLAINTIFF AND
CROSS DEFENDANT PENN-STAR
INSURANCE COMPANY; AND
DEFENDANTS TRINITY LOGISTICS
GROUP, INC., REYNALDA SANTOS,
CESAR SANTOS, E. SANTOS, MARIA E.
SANTOS, JOSE A. SANTOS, AND JUAN M.
SANTOS

EFREN J. SANTOS,

Counterclaimant and
third-party plaintiff,

v.

PENN-STAR INSURANCE COMPANY,
REBECCA DESAUTELS, and HUB
INTERNATIONAL TRANSPORTATION
INSURANCE SERVICES, INC.,

Counterdefendant and
third-party defendants.

(Doc. Nos. 54, 62, 63)

On August 24, 2016, plaintiff Penn-Star Insurance Company (“Penn-Star”) and
defendants Trinity Logistics Group, Inc. (“Trinity”), Efren Santos, Reynalda Santos, Cesar
Santos, E. Santos, Maria E. Santos, Efren J. Santos, Jose A. Santos, and Juan M. Santos filed a

1 joint stipulation to dismiss plaintiff Penn-Star's complaint without prejudice, with each party to
2 bear its own attorney's fees and costs. (Doc. No. 63.) In light of the parties' stipulation, plaintiff
3 Penn-Star's complaint is dismissed without prejudice and without an order as to attorney's fees or
4 costs. See Fed. R. Civ. P. 41(a)(1)(A)(ii); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir.
5 1997).

6 Also on August 24, 2016, defendant and counterclaimant Efren Santos filed a notice of
7 voluntary dismissal with prejudice of his counterclaims against Penn-Star pursuant to Federal
8 Rule of Civil Procedure 41(a)(1)(A)(i), with each party to bear its own attorney's fees and costs.
9 (Doc. No. 62.) While Penn-Star has filed a motion to dismiss (Doc. No. 54), it has not filed an
10 answer nor a motion for summary judgment. "Even if the defendant has filed a motion to
11 dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under
12 Rule 41(a)(1)." *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing *Miller v. Reddin*,
13 422 F.2d 1264, 1265 (9th Cir. 1970)). In light of this, the counterclaims against Penn-Star have
14 terminated, see Fed. R. Civ. P. 41(a)(1)(A)(i); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th
15 Cir. 1997), and are dismissed.

16 Accordingly,

- 17 1. The Clerk of the Court is directed to terminate plaintiff and counterdefendant Penn-
18 Star from this action;
- 19 2. Penn-Star's motion to dismiss (Doc. No. 54) is dismissed as having been rendered
20 moot;
- 21 3. The hearing on Penn-Star's motion to dismiss, set for September 6, 2016, is vacated;
- 22 4. The Clerk of the Court is directed to terminate defendants Trinity, Efren Santos,
23 Reynalda Santos, Cesar Santos, E. Santos, Maria E. Santos, Efren J. Santos, Jose A.
24 Santos, and Juan M. Santos from this action;

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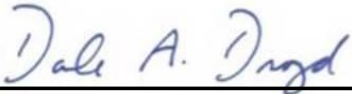
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5. This case now proceeds only on third-party plaintiff Efren Santos' first amended third-party complaint (Doc. No. 50) against third-party defendants Rebecca Desautels and Hub International Insurance Transportation Services, Inc.

IT IS SO ORDERED.

Dated: August 29, 2016



UNITED STATES DISTRICT JUDGE