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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5

6 **MARY ANN G. QUILALA, et al,**

7 **Plaintiffs**

8 **v.**

9 **SUN POWER CORP., et al,**

10 **Defendants**

CASE NO. 1:15-CV-1390 AWI BAM

**ORDER CLOSING CASE IN LIGHT OF
UNOPPOSED REQUEST TO DISMISS
CASE WITH PREJUDICE**

(Doc. No. 54)

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14 This case was transferred to this Court on September 11, 2015, from the District of Hawaii.
15 On October 14, 2015, defense counsel for Defendant Matriscope Engineering and Robert Tadlock
16 filed a Notice of Voluntary dismissal and Notice of Settlement. See Doc. Nos. 54, 55. The Notice
17 of Dismissal is a form from the Central District of California. See Doc. No. 54. The dismissal
18 form is not one that is used in the Eastern District of California, but the form is signed by both
19 Plaintiffs (who are pro se) and indicates that it is a dismissal of the entire action due to a
20 settlement. See id. The Notice of Settlement is signed only by counsel for Defendants Matriscope
21 Engineering Laboratories and Robert Tadlock. See Doc. No. 55. Prior to the filing of these
22 notices, Defendants Mortenson Construction and Tom Gunkel filed an answer. See id. at Doc.
23 No. 21. Mortenson Construction and Gunkel did not sign the Notice of Dismissal, nor have they
24 otherwise responded to the Notice of Dismissal or Notice of Settlement. In fact, there have been
25 no filings by any party subsequent to the October 14 notices.

26 Federal Rule of Civil Procedure 41(a) “allows plaintiffs voluntarily to dismiss some or all
27 of their claims against some or all defendants.” Romoland Sch. Dist. v. Inland Empire Energy
28 Ctr., LLC, 548 F.3d 738, 748 (9th Cir. 2008). Where a defendant has served an answer, but has

1 not signed a stipulation to dismiss, a plaintiff's voluntary dismissal must be effected through
2 Federal Rule of Civil Procedure 41(a)(2). See Fed. R. Civ. Pro. 41(a); Wilson v. City of San Jose,
3 111 F.3d 688, 692 (9th Cir. 1999). Rule 41(a)(2) provides in pertinent part: "Except as provided
4 in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on
5 terms that the court considers proper." Fed. R. Civ. Pro. 41(a)(2). "A district court should grant a
6 motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer
7 some plain legal prejudice as a result." Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001).

8 Here, because Defendants Mortenson Construction and Gunkel have filed an answer,
9 Plaintiff cannot unilaterally dismiss their lawsuit under Rule 41(a)(1)(A)(i). See Wilson, 111 F.3d
10 at 692. However, because Plaintiffs are pro se, and there appears to be a settlement, the Court will
11 view the Notice of Dismissal as a request for dismissal under Rule 41(a)(2). See Greenberg v.
12 Centurion Inv. Grp., 145 F.R.D. 610, 612 (S.D. Fla. 1993). So viewing the notice, dismissal is
13 appropriate. The answer of Defendants Mortenson Construction and Gunkel contains no
14 counterclaims, over two weeks have passed without any response from any party following the
15 filing of the notices (which means the requested dismissal is essentially unopposed), and the case
16 appears to be settled. Given these considerations, the Court will grant Plaintiff's request and close
17 this case. See Fed. R. Civ. Pro. 41(a)(2); Smith, 263 F.3d at 975.

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19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's Notice of Dismissal, which is construed as a request for dismissal under
21 Federal Rule of Civil Procedure 41(a)(2), is GRANTED (Doc. No. 54) is
22 GRANTED; and
23 2. The Clerk shall CLOSE this case.

24
25 IT IS SO ORDERED.

26 Dated: November 3, 2015


27 SENIOR DISTRICT JUDGE