

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUSTY GOBEL,

Plaintiff,

v.

HAUSER & HAUSER, INC., et al.,

Defendants.

Case No. 1:16-cv-00146-LJO-SAB

ORDER DISREGARDING NOTICE OF
VOLUNTARY DISMISSAL

(ECF No. 18)

FOURTEEN DAY DEADLINE

Plaintiff Rusty Gobel filed this action against Defendants Hauser & Hauser, Inc., Kevin Hauser, and Claudia Hauser (“Defendants”) on January 29, 2016. (ECF No. 1.) A first amended complaint was filed on March 3, 2016. (ECF No. 4.) On May 27, 2017, Defendants filed an answer to the first amended complaint. (ECF No. 6.) On October 20, 2017, Plaintiff filed a notice of voluntary dismissal. (ECF No. 18.) Plaintiff requests that the Court dismiss this action in its entirety, with prejudice, based on the execution of a settlement between the parties.

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Here, Defendants have filed an answer so Plaintiff cannot voluntarily dismiss this action pursuant to Rule 41(a)(1)(A)(i).

1 Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an
2 action without a court order by filing a stipulation of dismissal signed by all parties who have
3 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Therefore, Plaintiff may dismiss this action by filing
4 a stipulation of dismissal that is signed by all parties who have appeared.

5 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
6 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is
7 addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co.
8 Inc., 679 F.2d 143, 145 (9th Cir. 1982).

9 Plaintiff’s notice of voluntary dismissal is defective under Rule 41(a). If Plaintiff wishes
10 to dismiss this action, he is required to comply with the procedures set forth in Rule 41.

11 Accordingly, Plaintiff’s notice of settlement is HEREBY DISREGARDED. Plaintiff
12 shall file a request for dismissal that complies with Rule 41 within fourteen (14) days from the
13 date of entry of this order.

14
15 IT IS SO ORDERED.

16 Dated: October 24, 2017


UNITED STATES MAGISTRATE JUDGE