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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
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7 ELVIA ARACELA MELENDEZ-
8 SALAZAR,

9 Plaintiff,

10 v.

11 GOLDEN EMPIRE TOWING, INC., et al.,

12 Defendants.

Case No. 1:17-cv-00151-SAB

ORDER GRANTING JOINT MOTION TO
DISMISS DEFENDANT AOC ADJUSTERS
FRESNO, LTD WITH PREJUDICE AND
VACATING AUGUST 23, 2017 HEARING

(ECF No. 21)

13 This action was filed on February 3, 2017. On July 25, 2017, Plaintiff filed a joint
14 motion to dismiss Defendant AOC Adjusters Fresno, Ltd. only. (ECF No. 21.)

15 Rule 41 of the Federal Rules of Civil Procedure governs dismissal in this action.
16 “[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his action
17 prior to service by the defendant of an answer or a motion for summary judgment.’ ”
18 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)
19 (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Under Rule
20 41(a)(1)(A)(ii), a party may dismiss an action without a court order by stipulation signed by all
21 parties who have appeared.

22 Defendant Golden Empire Towing, Inc. has filed an answer but did not sign the motion to
23 dismiss Defendant AOC Adjusters Fresno, Ltd. Therefore, on July 25, 2017, Defendant Golden
24 Empire Towing, Inc. was ordered to file an opposition or statement of non-opposition to the
25 motion to dismiss on or before August 9, 2017. Defendant Golden Empire Towing, Inc. did not
26 respond to the July 25, 2017 order.

27 Pursuant to the Local Rule, a party who fails to file a timely opposition is not entitled to
28 be heard in opposition to the motion at oral argument. L.R. 230(c). Therefore, the Court shall

1 vacate the hearing on the joint motion to dismiss; and the Court shall construe Golden Empire
2 Towing's lack of response as a non-opposition to the motion to dismiss.

3 Rule 41(a) allows a party to dismiss some or all of the defendants or claims in an action
4 through a Rule 41(a) notice. Wilson, 111 F.3d at 692. Pursuant to Rule 41(a)(2) an action may
5 be dismissed on court order by terms the court considers proper. A motion for voluntary dismissal
6 under Rule 41(a)(2) is addressed to the sound discretion of the district court. Hamilton v. Firestone
7 Tire & Rubber Co. Inc., 679 F.2d 143, 145 (9th Cir. 1982). "A district court should grant a motion
8 for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain
9 legal prejudice as a result." Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001). The Ninth Circuit
10 has held that legal prejudice means prejudice to "some legal interest, some legal claim, some legal
11 argument." Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th Cir. 1996).

12 Here, Plaintiff and Defendant AOC Adjusters Fresno, Ltd. have jointly moved to dismiss
13 this action as to Defendant AOC Adjusters. Defendant Golden Empire Towing, Inc. has not
14 identified any prejudice that will result due to the dismissal. Accordingly, the Court shall grant
15 the motion to dismiss.

16 Based on the foregoing, IT IS HEREBY ORDERED that:

- 17 1. The hearing on Plaintiff's motion to dismiss set for August 23, 2017, at 10:00
18 a.m. is VACATED;
- 19 2. The joint motion to dismiss AOC Adjusters Fresno, Ltd. is GRANTED;
- 20 3. Defendant AOC Adjusters Fresno, Ltd. is dismissed from this action with
21 prejudice; and
- 22 4. This action shall proceed against Defendant Golden Empire Towing, Inc.

23 IT IS SO ORDERED.

24 Dated: August 10, 2017

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27 UNITED STATES MAGISTRATE JUDGE
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