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

6 **JOGERT ABRANTES, individually and**
7 **on behalf of all other similarly situated,**

8 **Plaintiff**

9 **v.**

10 **AMERICAN BLINDS AND DRAPERIS,**
11 **INC., PAUL RUSSO, and DOES 1-10**
12 **inclusive,**

13 **Defendants**

CASE NO. 1:17-CV-0152 AWI SAB

ORDER VACATING MAY 7, 2018
HEARING DATE AND DISMISSING
MATTER

(Doc. No. 28)

14 On February 3, 2017, Plaintiff filed suit against Defendants and alleged violations of the
15 Telephone Consumer Protection Act (47 U.S.C. § 227).

16 Defendant Paul Russo (“Russo”) was added as a defendant in the First Amended
17 Complaint on June 13, 2017. Russo filed an answer on September 1, 2017. See Doc. No. 19.

18 On November 14, 2017, Defendant American Blinds and Draperies, Inc. was voluntarily
19 dismissed under Rule 41(a)(1). See Doc. No. 23.

20 On March 22, 2018, Plaintiff filed a motion to dismiss this case under Rule 41(a)(2). See
21 Doc. No. 28. As part of his motion, Plaintiff explains that Russo has not responded in any way to
22 discovery requests, scheduling efforts, or invitations to attempt to resolve the matter. See id.
23 Because American Blinds dissolved, Plaintiff believes that it is in the interests of judicial economy
24 to dismiss the complaint without prejudice. See id. Hearing on this motion is set for May 7, 2018.

25 Discussion

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 of an "action" must be effected
2 through Federal Rule of Civil Procedure 41(a)(2). See Fed. R. Civ. Pro. 41(a); Wilson v. City of
3 San Jose, 111 F.3d 688, 692 (9th Cir. 1999); Mayes v. Fujimoto, 181 F.R.D. 453, 455 (D. Haw.
4 1998). Rule 41(a)(2) provides in pertinent part: "Except as provided in Rule 41(a)(1), an action
5 may be dismissed at the plaintiff's request only by court order, on terms that the court considers
6 proper." Fed. R. Civ. Pro. 41(a)(2). "A district court should grant a motion for voluntary
7 dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal
8 prejudice as a result." Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001).

9 Here, based on Plaintiff's representations, the corporate defendant has dissolved and Russo
10 has not participated in the suit or communicated with Plaintiff or the Court, beyond filing an
11 answer. Indeed, Russo's answer indicates that he strongly denies the allegations in the complaint
12 and views this lawsuit as a scam. Russo has filed no counterclaims, and the Court detects no
13 prejudice that would result from the dismissal of this lawsuit. Because there is no prejudice to
14 Russo that is apparent, the Court finds that a hearing on Plaintiff's motion is unnecessary and that
15 that Plaintiff's motion to dismiss without prejudice should be granted. See Fed. R. Civ. P.
16 41(a)(2); Smith, 263 F.3d at 975; Local Rule 270.

17
18 **ORDER**

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The May 7, 2018 hearing is VACATED;
21 2. Plaintiff's Rule 41(a)(2) motion to dismiss without prejudice is GRANTED; and
22 3. The Clerk shall CLOSE this case.

23
24 IT IS SO ORDERED.

25 Dated: April 12, 2018


26 SENIOR DISTRICT JUDGE