

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

RACHEL K. RUIZ,  
Plaintiff,  
v.  
WELLS FARGO, N.A., et al.,  
Defendants.

Case No. 1:17-cv-00323-LJO-SAB  
ORDER RE STIPULATION TO DISMISS  
DEFENDANT TRANS UNION, LLC  
(ECF No. 48)

On May 3, 2017, Plaintiff filed a notice of settlement as to Defendant Trans Union, LLC only. (ECF No. 37.) On May 5, 2017, the Court ordered the parties to file dispositional documents on or before July 3, 2017. (ECF No. 40.) On June 21, 2017, Plaintiff and Defendant Trans Union, LLC filed a stipulation dismissing this action with prejudice against Trans Union, LLC with each party to bear its own costs and fees. (ECF No. 48.)

Plaintiff can dismiss this action without a court order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), which provides that a “plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Here, the stipulation to dismiss Trans Union, LLC is only signed by Plaintiff and Defendant Trans Union. There are other defendants who have appeared in this action, and therefore, the stipulation (ECF No. 48) is defective under Rule 41(a)(1).

Plaintiff also cannot voluntarily dismiss Defendant Trans Union, LLC pursuant to Rule

1 41(a)(1)(A)(i). “[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily  
2 dismiss his action prior to service by the defendant of an answer or a motion for summary  
3 judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th  
4 Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Here,  
5 Defendant Trans Union, LLC has filed an answer.

6 The parties may file a stipulation of dismissal of Defendant Trans Union, LLC that is  
7 signed by all parties who have appeared, Federal Rule of Civil Procedure 41(a)(1)(A)(ii), or file  
8 a motion to dismiss Defendant Trans Union, LLC by court order, Federal Rule of Civil  
9 Procedure 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the  
10 sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co. Inc., 679 F.2d  
11 143, 145 (9th Cir. 1982). Since, the Rule 41(a)(1) stipulation (ECF No. 48) is defective,  
12 Defendant Trans Union, LLC remains a party to this action.

13 Accordingly, it is HEREBY ORDERED that the parties shall file dispositional documents  
14 in compliance with the Court’s May 5, 2017 order on or before July 3, 2017.

15 IT IS SO ORDERED.

16 Dated: June 21, 2017

17   
18 \_\_\_\_\_  
19 UNITED STATES MAGISTRATE JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28