

1 DANIEL MALAKAUSKAS, SBN 265903  
7345 South Durango Drive  
2 Suite B-107-240  
Las Vegas, NV 89113  
3 Telephone: 866-790-2242  
Facsimile: 888-802-2440  
4 Electronic Mail: daniel@malakauskas.com

5 Attorney for PLAINTIFF

6 ROGER J. BROTHERS, SBN 118622  
7 NEIL T. MEDEIROS, SBN 256734  
BUCHMAN PROVINE BROTHERS SMITH LLP  
8 2033 N. Main Street, Suite 720  
Walnut Creek, California 94596  
9 Telephone: 925-944-9700  
10 Facsimile: 925-944-9701

11 Attorneys for Defendant  
12 KELLY-MOORE PAINT COMPANY, INC.,

13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**  
15 **SACRAMENTO DIVISION**

17 **CYNTHIA HOPSON,**

18 Plaintiff,

19 v.

20 **KELLY-MOORE PAINT COMPANY, INC.,**  
as an entity and doing business as Kelly-Moore  
21 Paint #304”, and **DOES** 1-50, Inclusive,

22 Defendants.

Case No.: 1:17-cv-1735-DAD-SKO

**ORDER GRANTING STIPULATED  
DISMISSAL WITH PREJUDICE**

[Fed. R. Civ. P. 41]

(Doc. 10)

23 **ORDER**

24  
25 On May 1, 2018, the parties filed a stipulation requesting that the present action be dismissed  
26 with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1), with each party to bear its own  
27 costs, expenses, and attorney’s fees. (Doc. 10.)  
28

1 In relevant part, Rule 41(a)(1)(A) provides as follows:

2 [A] plaintiff may dismiss an action without a court order by filing: (i) a notice of  
3 dismissal before the opposing party serves either an answer or a motion for summary  
4 judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.

5 Fed. R. Civ. P. 41(a)(1)(A). Rule 41 thus allows the parties to dismiss an action voluntarily, after  
6 service of an answer, by filing a written stipulation to dismiss signed by all of the parties who have  
7 appeared, although an oral stipulation in open court will also suffice. *See Eitel v. McCool*, 782 F.2d  
8 1470, 1472-73 (9th Cir. 1986).

9 Once the stipulation between the parties who have appeared is properly filed or made in open  
10 court, no order of the court is necessary to effectuate dismissal. Case law concerning stipulated  
11 dismissals under Rule 41(a)(1)(A)(ii) is clear that the entry of such a stipulation of dismissal is  
12 effective automatically and does not require judicial approval. *Commercial Space Mgmt. Co. v.*  
13 *Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999). Because the parties have filed a stipulation for  
14 dismissal of this case with prejudice under Rule 41(a)(1)(A)(ii) that is signed by all parties who have  
15 made an appearance, this case has terminated. Fed. R. Civ. P. 41(a)(1)(A)(ii).

16 Accordingly IT IS HEREBY ORDERED that the Clerk of the Court close this case.

17 IT IS SO ORDERED.

18 Dated: May 2, 2018

19 /s/ Sheila K. Olerto  
20 UNITED STATES MAGISTRATE JUDGE