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8	UNITED STATES	DISTRICT COURT	
9	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA		
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11	JILL MCGEE; et al.,	Case No. 1:18-cv-00768-LJO-SAB	
12	Plaintiffs,	ORDER RE STIPULATION TO DISMISS PLAINTIFFS' SIXTH CAUSE OF ACTION	
13	V.	FOR UNFAIR COMPETITION, CALIFORNIA BUSINESS AND	
15	POVERELLO HOUSE; et al.,	PROFESSIONS CODE § 17200 ET SEQ.	
16	Defendants.	(ECF No. 43)	
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18	On October 2, 2019, stipulations were filed to dismiss certain Plaintiffs from this action		
19	and to dismiss Plaintiff's sixth cause of action. An order was filed on October 3, 2019, dismiss		
20	Plaintiffs Noadiah Riaz, Christine Dambrosi and Lacey Hoxsie from this action without		
21	prejudice. By this order, the Court addresses the parties' stipulation to dismiss the sixth cause of action.		
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23	The Ninth Circuit has held that Federal Rule of Civil Procedure 41(a)(1) cannot be used		
24	to dismiss individual claims against defendants, and that Rule 15 is the proper mechanism to do		
25	so. See Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 687 (9th Cir. 2005) ("In		
26	the specific context of Rule $41(a)(1)$, we have held that the Rule does not allow for piecemeal		
27	dismissals. Instead, withdrawals of individual claims against a given defendant are governed by		
28	[Rule 15]."); Ethridge v. Harbor House Rest., 861 F.2d 1389, 1392 (9th Cir. 1988) (holding a		
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1	plaintiff cannot use Rule 41 "to dismiss, unilaterally, a single claim from a multi-claim	
2	complaint."); but see Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997) ("The	
3	Plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule	
4	41(a)(1) notice."). The Court finds it proper to construe the parties' stipulation to dismiss the	
5	individual cause of action as consent to amend the complaint under Rule 15 of the Federal Rules	
6	of Civil Procedure. See Hells Canyon Pres. Council, 403 F.3d at 689 ("The fact that a voluntary	
7	dismissal of a claim under Rule 41(a) is properly labeled an amendment under Rule 15 is a	
8	technical, not a substantive distinction.") (quoting Nilssen v. Motorola, Inc., 203 F.3d 782, 784	
9	(Fed. Cir. 2000)). Therefore, the Court will give full effect to the parties' stipulation through a	
10	Rule 15 amendment.	
11	Accordingly, IT IS HEREBY ORDERED that pursuant to the parties' stipulation to	
12	dismiss Plaintiffs' sixth cause of action for unfair competition in violation of California	
13	Business and Professions Code section 17200 et seq. without prejudice against Defendants	
14	Poverello House and Naomi's House, the Plaintiffs' operative complaint (ECF No. 1 at 5-16) is	
15	DEEMED AMENDED and the sixth cause of action is no longer alleged against Defendants	
16	Poverello House and Naomi's House.	
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18	IT IS SO ORDERED.	
19 20	Dated: October 4, 2019 /s/ Lawrence J. O'Neill	
20	UNITED STATES CHIEF DISTRICT JUDGE	
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