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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISIDRO OROZCO, et al.,
Plaintiffs,
v.
FCA US, LLC,
Defendant.

Case No. 1:21-cv-01674-SAB
ORDER DISREGARDING PLAINTIFFS’
REQUEST FOR DISMISSAL
(ECF No. 61)
FOURTEEN DAY DEADLINE

Plaintiffs filed this action on November 19, 2021. (ECF No. 1.) On February 24, 2022, Defendant filed its answer to the complaint. (ECF No. 10.) On August 28, 2024, Plaintiffs filed a request for dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. (ECF No. 61.) The request was filed as a “motion to dismiss” and is signed only by Plaintiffs. (*Id.* at 2.)

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.” *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997)).

Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure provides that a “plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all

1 parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). “As the express language of this
2 rule indicates, for a dismissal under Rule 41(a)(1)(ii) to be effective, all parties who have
3 appeared must sign the stipulation.” Aswad v. ACA Receivables, L.L.C., No.
4 CIVF060835AWILJO, 2007 WL 427591, at *1 (E.D. Cal. Feb. 7, 2007) (emphasis added).

5 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
6 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is
7 addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co.
8 Inc., 679 F.2d 143, 145 (9th Cir. 1982).

9 Plaintiffs’ request for dismissal is defective under Rule 41(a) because it is not a signed
10 stipulation by all parties who have appeared, and it is not a motion under Rule 41(a)(2). If
11 Plaintiffs wish to dismiss this action, they are required to comply with the procedures set forth in
12 Rule 41 by either filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under
13 Rule 41(a)(2) that complies with Local Rule 230.

14 Accordingly, Plaintiffs’ request for dismissal is **HEREBY DISREGARDED**. Plaintiffs
15 shall file a request for dismissal of this action that complies with Rule 41 within **fourteen (14)**
16 **days** from the date of entry of this order.

17 IT IS SO ORDERED.

18 Dated: August 29, 2024

19 
20 UNITED STATES MAGISTRATE JUDGE