

1 request for voluntary dismissal be granted.

2 **II. LEGAL STANDARD**

3 Typically, parties may dismiss an action without a court order pursuant to Federal Rule of
4 Procedure 41 by filing “a stipulation of dismissal signed by all parties who have appeared.” Fed.
5 R. Civ. P. 41(a)(1)(A)(ii). Rule 23(e), however, governs the dismissal of class actions, even
6 before class certification has occurred. *Diaz*, 876 F.2d at 1408. Accordingly, the “district court
7 must ensure that the representative plaintiff fulfills his fiduciary duty toward the absent class
8 members” and must “inquire into the terms and circumstances of any dismissal or compromise to
9 ensure that it is not collusive or prejudicial.” *Id.* Although the court “does not need to perform
10 the kind of substantive oversight required when reviewing a settlement binding upon the class,” it
11 must determine whether dismissal would prejudice class members due to:

12 (1) class members’ possible reliance on the filing of the action if they are likely to
13 know of it either because of publicity or other circumstances, (2) lack of adequate
14 time for class members to file other actions, because of a rapidly approaching
15 statute of limitations, (3) any settlement or concession of class interests made by
16 the class representative or counsel in order to further their own interests.”

17 *Id.* Regardless, “[i]n no pre-certification dismissal would the court reject the dismissal and
18 require anything more than notice to the class and an opportunity to intervene.” *Id.*

19 **II. DISCUSSION**

20 Plaintiff first argues that the *Diaz* factors do not apply because that case “was decided
21 prior to amendments to Rule 23(e), which clarified that Rule 23(e) applies to certified classes or
22 settlement classes.” (ECF No. 17, p. 2). However, Plaintiff also argues that “even if the Court
23 were to apply the *Diaz* factors to these circumstances, dismissal would be proper.” (*Id.* at p. 3).

24 Applying the *Diaz* factors here, the Court finds that dismissal of Plaintiff’s class claims
25 without prejudice will not harm any putative class members. Regarding the first factor, “the
26 danger of reliance is generally limited to actions that would be considered of sufficient public
27 interest to warrant news coverage of either the public or trade-oriented variety, and such reliance
28 can occur only on the part of those persons learning of the action who are sophisticated enough in
the ways of the law to understand the significance of the class action allegation.” *Mahan v. Trex*
Co., Inc., No. 5:09-cv-00670, 2010 WL 4916417, at *3 (N.D. Cal. Nov. 22, 2010) (citation,
alterations, and internal quotations omitted). Here, Plaintiff contends that there are no class

1 members with a reliance interest in the action because “[t]his action has not been publicized in
2 any way[.]” (ECF No. 17, p. 3). Moreover, this case is in its early stages as Defendant has not
3 filed an answer and the Court has not yet held a scheduling conference. Accordingly, the Court
4 finds that this factor does not prejudice putative class members.

5 Second, Plaintiff argues that because the one-year statute of limitations on Plaintiff’s
6 claims does not run until October 2023, “the rights of the putative class are preserved by the
7 solely individual dismissal of Plaintiff’s claims with prejudice.” Accordingly, this factor does not
8 prejudice putative class members because there is adequate time to file other actions.

9 Finally, there is no indication that dismissal represents a concession of class member
10 interests. As Plaintiff states, “the resolution reaches between the Parties does not address, affect,
11 or change the putative class’s rights or claims in any manner.” (ECF No. 17, pp. 3-4).
12 Additionally, putative class members will be free to pursue their claims.

13 The Court finds that dismissal of this action without prejudice does not present a risk of
14 prejudice to the putative class. Therefore, notice to the putative class members is not required.
15 *See Diaz*, 876 F.2d at 1408 (“Notice to the class of pre-certification dismissal is not, however,
16 required in all circumstances.”). Thus, the Court will recommend that Plaintiff’s individual claims
17 be dismissed with prejudice, and that all claims brought on behalf of the putative class be
18 dismissed without prejudice.

18 **III. RECOMMENDATION**

19 Based on the foregoing, the Court recommends that Plaintiff’s complaint be dismissed as
20 follows:

- 21 1. That Plaintiff Ruth Martin’s individual claims for violations of the California Invasion
22 of Privacy Act against Defendant Lovisa America LLC be dismissed with prejudice;
- 23 2. That all claims brought by Plaintiff Ruth Martin on behalf of the putative class for
24 violations of the California Invasion of Privacy Act against Defendant Lovisa America
25 LLC be dismissed without prejudice;
- 26 3. The Clerk of the Court be directed to close this case.

27 These findings and recommendations are submitted to the United States district judge
28 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one

1 (21) days after being served with these findings and recommendations, any party may file written
2 objections with the court. Such a document should be captioned “Objections to Magistrate
3 Judge’s Findings and Recommendations.” Any response to the objections shall be served and
4 filed within fourteen (14) days after service of the objections. The parties are advised that failure
5 to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson*
6 *v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394
7 (9th Cir. 1991)).

8 IT IS SO ORDERED.

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10 Dated: May 23, 2023

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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