

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

BRYAN MUNOZ, et al.,
Plaintiffs,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

Case No. 1:24-cv-00540-KES-SAB
ORDER DIRECTING THE CLERK OF THE COURT TO TERMINATE THE U.S. ARMY CORPS OF ENGINEERS AND THE U.S. DEPARTMENT OF AGRICULTURE-FOREST SERVICE AS PARTIES IN THIS ACTION
(ECF No. 12)

On April 2, 2024, Brian Munoz, Maritsa Molina, Jerry Munoz-Molina, Gerardo Munoz, and Angelene Munoz-Molina (“Plaintiffs”) filed this action in Tulare County Superior Court against State of California, County of Tulare, U.S. Army Corps of Engineers, and U.S. Department of Agriculture-Forest Service. (ECF No. 1-1). On May 7, 2024, Defendants U.S. Army Corps of Engineers and U.S. Department of Agriculture-Forest Service removed this action to the Eastern District of California. (ECF No. 1.) On June 4, 2024, Plaintiff filed a motion to remand and stipulation to dismiss Defendants U.S. Army Corps of Engineers and U.S. Department of Agriculture-Forest Service.

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.

1 1997)). The Ninth Circuit has held that Rule 41(a) allows a plaintiff to dismiss without a court
2 order any defendant who has yet to serve an answer or motion for summary judgment. Pedrina
3 v. Chun, 987 F.2d 608, 609 (9th Cir. 1993). Federal Rule of Civil Procedure 41(a)(1)(A)(ii)
4 provides that a “plaintiff may dismiss an action without a court order by filing a stipulation of
5 dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Here,
6 although no answer or summary judgment has been filed, a stipulation has been signed by all
7 parties currently appearing in this matter.

8 Rule 41(a) allows a party to dismiss some or all of the defendants in an action through a
9 Rule 41(a) notice. Wilson, 111 F.3d at 692; see also Concha v. London, 62 F.3d 1493, 1506 (9th
10 Cir. 1995) (“The plaintiff may dismiss either some or all of the defendants—or some or all of his
11 claims—through a Rule 41(a)(1) notice.”); but see Hells Canyon Pres. Council v. U.S. Forest
12 Serv., 403 F.3d 683, 687 (9th Cir. 2005) (The Ninth Circuit has “only extended the rule to allow
13 the dismissal of all claims against one defendant, so that a defendant may be dismissed from the
14 entire action.”). “Filing a notice of voluntary dismissal with the court automatically terminates
15 the action as to the defendants who are the subjects of the notice.” Concha, 62 F.3d at 1506.

16 “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the
17 parties are left as though no action had been brought, the defendant can’t complain, and the
18 district court lacks jurisdiction to do anything about it.” Commercial Space Mgmt. Co., Inc., 193
19 F.3d at 1078.

20 Accordingly, the Clerk of the Court is DIRECTED to terminate Defendants U.S. Army
21 Corps of Engineers and U.S. Department of Agriculture-Forest Service as parties in this action.

22 IT IS SO ORDERED.

23 Dated: June 5, 2024

24 
25 _____
26 UNITED STATES MAGISTRATE JUDGE
27
28