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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN BROOKS, et al.  
Plaintiffs,  
v.  
FCI LENDER SERVICES, INC., et al.,  
Defendants.

No. 2:16-cv-2598-KJM-KJN (PS)

ORDER

On March 29, 2017, defendant Ocwen Loan Servicing (“Ocwen”) filed a stipulation between itself and both plaintiffs stating that plaintiffs voluntarily dismiss all claims asserted against Ocwen in this action pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).<sup>1</sup> (ECF No. 34.) Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that “plaintiff[s] may dismiss an action without a court order by filing . . . a stipulation of dismissal *signed by all parties who have appeared.*” Fed. R. Civ. P. 41(a)(1)(A)(ii) (emphasis added). Here, the stipulation is signed only by plaintiffs and counsel for Ocwen; the other defendants who have appeared in this action to date have not signed the stipulation to voluntarily dismiss. Accordingly, the stipulation is defective insofar as it is made pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). However, Federal Rule of Civil Procedure 41(a)(2) permits dismissal at the plaintiffs’ request by

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<sup>1</sup> Both plaintiffs signed the filed stipulation. (ECF No. 34.)

1 court order, “on terms the court considers proper.” Fed. R. Civ. P. 41(a)(2). Indeed, while  
2 plaintiffs and Ocwen request that their stipulation be approved pursuant to Federal Rule of Civil  
3 Procedure 41(a)(1)(A)(ii), which does not need a court order to take effect, their request that the  
4 court issue an order approving the stipulated terms of dismissal appears to actually be a request  
5 for a court order of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). Because the  
6 court finds the stipulated terms of dismissal in Ocwen’s and plaintiffs’ request to be proper, the  
7 court grants their request.


8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Defendant Ocwen is dismissed from this action with prejudice pursuant to its  
10 stipulation with plaintiffs (ECF No. 34).

11 2. Plaintiffs and Ocwen shall bear their own fees and costs, including all attorneys’  
12 fees, incurred in connection with this action.

13 IT IS SO ORDERED.

14 Dated: April 19, 2017

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17 KENDALL J. NEWMAN  
18 UNITED STATES MAGISTRATE JUDGE  
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