

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
NORTHERN DISTRICT OF CALIFORNIA

SHEILA HIDALGO, et al.,
Plaintiffs,
v.
CL MEDICAL INC.,
Defendant.

Case No. [12-cv-05664-WHO](#)

**ORDER REJECTING NOTICE OF
VOLUNTARY DISMISSAL WITHOUT
PREJUDICE**

Re: Dkt. No. 53

Plaintiffs Sheila Hidalgo and Fernando Hidalgo have filed a notice pursuant to Federal Rule of Civil Procedure 41(a)(1) purporting to voluntarily dismiss all claims without prejudice as to Fernando Hidalgo. Plaintiffs misunderstand Rule 41(a)(1), which states that a notice of dismissal is only effective “before the opposing party serves either an answer or a motion for summary judgment.” The rule does not say that a defendant must both file an answer and a motion for summary judgment to extinguish plaintiffs’ right to voluntarily dismiss without prejudice. Plaintiffs’ right to dismiss without prejudice under Rule 41(a)(1) terminated when defendant CL Medical Inc. filed its Answer on November 13, 2012.

If they choose to do so, plaintiffs may file a motion to dismiss Fernando Hidalgo under Rule 41(a)(2) or a joint stipulation and proposed order for the Court to review.

IT IS SO ORDERED.

Dated: December 10, 2013



WILLIAM H. ORRICK
United States District Judge