

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

COPPER HILL, INC.,

NO. 5:11-cv-03714 EJD

Plaintiff(s),

**ORDER DENYING DEFENDANT’S  
REQUEST FOR DISMISSAL; SETTING  
DEADLINE FOR FURTHER ACTION**

v.

DEBORAH J. CABRAL,

Defendant(s).

[Docket Item No. 8]

On or about August 26, 2011, the court received a letter containing the following one-sentence statement: “Please dismiss the District Court Case # CV11-03714 EJD.” See Docket Item No. 8. The letter was signed only by Defendant Deborah J. Cabral (“Cabral”).

Pursuant to Federal Rule of Civil Procedure 41, there are only two ways in which an action can be dismissed voluntarily: (1) through a Notice of Dismissal filed by the *plaintiff* before the opposing party serves an answer or motion for summary judgment, or (2) through a stipulation for dismissal signed by all parties who have appeared. Fed. R. Civ. P. 41(a). Rule 41 also allows for dismissal by court order “at the *plaintiff’s* request...on terms that the court considers proper.” Fed. Rule Civ. Proc. 41(a)(2) (emphasis added).

While her intent is not entirely clear, it appears Cabral seeks to dismiss this case either voluntarily or by court order. But as stated above, a defendant in a civil action - like Cabral - cannot effectuate a unilateral dismissal. Only a plaintiff may do so pursuant subsections (a)(1)(A)(i) or (a)(2) of Rule 41. In addition, Cabral’s letter cannot be classified as a stipulation for dismissal under subsection (a)(1)(A)(ii) of Rule 41 as only her signature appears on the document. Thus, without an

United States District Court  
For the Northern District of California

1 indication on the court docket that Plaintiff Copper Hill, Inc. (“Copper Hill”) either separately  
2 requests or stipulates to the dismissal, Cabral’s informal request must be denied.

3 In light of the discussion above, however, the court finds it appropriate to order a deadline  
4 for further action by the parties. Accordingly, Copper Hill shall file a request for dismissal or the  
5 parties shall submit a stipulation for dismissal on or before September 26, 2011, if this case is to be  
6 dismissed. If such a request or stipulation is not filed by the date ordered, the court will thereafter  
7 summarily remand this unlawful detainer case to the Superior Court of California, County of Santa  
8 Clara, pursuant to 28 U.S.C. § 1446(c)(4), as no basis for federal jurisdiction exists upon a review of  
9 the Notice of Removal and its attached documents. See Vaden v. Discovery Bank, 129 S. Ct. 1262,  
10 1272 (2009).

11 **IT IS SO ORDERED.**

12  
13 Dated: September 14, 2011

  
EDWARD J. DAVILA  
United States District Judge

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28