

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

WORLDWIDE MEDIA, INC., et al.,
Plaintiffs,
v.
TWITTER, INC.,
Defendant.

Case No. 17-cv-07335-PJH

**ORDER DISMISSING DOE
DEFENDANTS AND REFERRING THE
ACTION TO MAGISTRATE JUDGE
FOR ALL PURPOSES**

Before the court is plaintiffs Michael Berkens’s and Worldwide Media, Inc.’s (“Worldwide Media”) notice of voluntary dismissal. Dkt. 41. Having read the parties’ papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

BACKGROUND

Plaintiffs Worldwide Media and Michael Berkens filed this suit against defendants Twitter, Inc. (“Twitter”) and Does 1–10 (“the Doe Defendants”) on December 27, 2017. Dkt. 1. On February 20, 2018, Twitter consented to magistrate judge jurisdiction. Dkt. 15. On February 26, 2018, both plaintiffs consented to magistrate judge jurisdiction. Dkt. 16. The Doe Defendants have not been served, have not made an appearance, and of course have not consented to magistrate judge jurisdiction. See Dkt. 38 at 2; Dkt. 41 at 3.

On May 14, 2018, Twitter filed a motion to dismiss the complaint. Dkt. 24. Plaintiffs did not oppose that motion; instead, they filed a First Amended Complaint (“FAC”) on May 29, 2018, mooted Twitter’s motion. Dkt. 25. Like the original complaint, that FAC named as defendants Twitter and Does 1–10. Id. On June 12, 2018, Twitter

1 filed a motion to dismiss the FAC.

2 On August 9, 2018, Magistrate Judge DeMarchi issued a Report and
3 Recommendation regarding Twitter’s motion to dismiss the FAC. Dkt. 38. The Report
4 and Recommendation also ordered the case reassigned to a district judge because—
5 although both plaintiffs and Twitter had consented to magistrate judge jurisdiction—“none
6 of the Doe defendants has been identified, and none has appeared or consented to
7 magistrate judge jurisdiction.” Dkt. 38 at 2. No party filed an objection to the Report and
8 Recommendation.

9 On September 6, 2018, plaintiffs filed a notice of voluntary dismissal, requesting
10 that the court “dismiss, without prejudice, any remaining claims as to Doe Defendants”
11 pursuant to Federal Rule of Civil Procedure 41 (“Rule 41”). Dkt. 41 at 3.

12 **PLAINTIFFS’ NOTICE OF VOLUNTARY DISMISSAL**

13 Rule 41 allows a plaintiff to “dismiss an action without a court order by filing . . . a
14 notice of dismissal before the opposing party serves either an answer or a motion for
15 summary judgment[.]” Rule 41(a)(1)(A)(i). Rule 41 also permits a court to dismiss an
16 action “by court order, on terms that the court considers proper.” Rule 41(a)(2). Although
17 Rule 41 uses the term “action,” “[m]ost contemporary courts, including our own, have
18 declined to read the rule literally as permitting the dismissal only of an *entire* action
19 against *all* defendants.” Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683,
20 687 (9th Cir. 2005) (citing Pedrina v. Chun, 987 F.2d 608, 609 & n.1 (9th Cir. 1993)).
21 Instead, the rule “allow[s] the dismissal of *all* claims against *one* defendant, so that a
22 defendant may be dismissed from the entire action.” Id.; Pedrina, 987 F.2d at 609 (“Rule
23 41(a)(1) allows a plaintiff to dismiss without a court order any defendant who has yet to
24 serve an answer or a motion for summary judgment.”).

25 Plaintiffs have filed a notice to dismiss the Doe Defendants from the entire action.
26 Dkt. 41. The Doe Defendants have not yet served an answer or a motion for summary
27 judgment. As such, plaintiffs’ notice of voluntary dismissal has the effect of dismissing
28

1 the Doe Defendants from the action without prejudice, without a court order.¹ Therefore,
2 defendants Does 1–10 are DISMISSED from the action WITHOUT PREJUDICE.

3 All of the remaining parties to this action—Worldwide Media, Berkens, and
4 Twitter—have consented to magistrate judge jurisdiction. Pursuant to Local Rule 72-1
5 and the consent of the parties, this matter is therefore referred to Magistrate Judge
6 DeMarchi for all purposes including trial and entry of judgment.

7 The parties will be advised of the date, time and place of the next appearance by
8 notice from Magistrate Judge DeMarchi.

9 **IT IS SO ORDERED.**

10 Dated: October 22, 2018



PHYLLIS J. HAMILTON
United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ¹ In the alternative, the court finds it proper under the circumstances to dismiss the Doe Defendants from the action without prejudice pursuant to Rule 41(a)(2).