

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MILLER'S FURNITURE OF MERCER
COMPANY, a Pennsylvania
Corporation, individually and as the
representative of a class of similarly-
situated persons,

Plaintiff,

v.

Case No: 2:17-cv-456-FtM-99CM

BANNER LIFE INSURANCE
COMPANY, WILLIAM PENN LIFE
INSURANCE COMPANY OF NEW
YORK, DJM ADVISORY GROUP
LLC, DONALD QUIRKE and JOHN
DOE,

Defendants.

ORDER¹

This matter comes before the Court on review of Plaintiff's Notice of Dismissal With Prejudice ([Doc. 73](#), "Notice") filed on January 9, 2018. This junk fax case has been stayed since October 19, 2017, pending final settlement of another case involving the identical junk fax, *JWD Automotive, Inc. v. DJM Advisory Group, LLC, et al.*, case no. 2:15-cv-793-JES-MRM ("JWD"). The Notice informs the Court that the *JWD* class settlement has been

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approved and the case dismissed; therefore, Plaintiff requests that this case be dismissed with prejudice.

Although Defendants have previously represented that final approval of the *JWD* settlement would resolve Plaintiff's claims in this case ([Doc. 50 at 1-2](#)), the Notice of Dismissal is not stipulated to as required by [Federal Rule of Civil Procedure 41](#). [Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)\(ii\)](#) allows a plaintiff to dismiss an action voluntarily if a stipulation of dismissal *is signed by all parties who have appeared*. Thus, the Court will deny the request for dismissal at this time without prejudice to refile as a stipulation. If the *JWD* settlement somehow requires dismissal of this case in some other fashion, Plaintiff must inform the Court of this. Because the *JWD* settlement has received final approval and has been dismissed, the Court will lift the stay of this matter.


Accordingly, it is now

ORDERED:

(1) Plaintiff's Notice of Dismissal With Prejudice ([Doc. 73](#)) is **DENIED without prejudice**.

(2) The stay of this case is lifted. The Clerk is directed to remove the stay flag from the docket.

DONE and **ORDERED** in Fort Myers, Florida this 10th day of January, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record