

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL HUMAN, *individually and*)
on behalf of others similarly situated,)
)
Plaintiff,)
)
vs.)
)
FISHER INVESTMENTS, INC.,)
)
Defendant.)

Case No. 4:24-cv-01177-MTS

MEMORANDUM AND ORDER

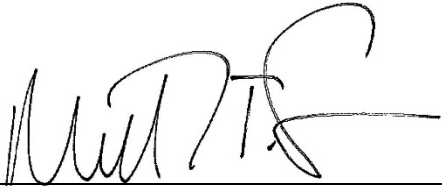
This matter is before the Court on Plaintiff’s “Notice of Voluntary Dismissal.” Doc. [37]. It purports to dismiss this action pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. *See id.* It does not do so. Pursuant to Rule 41(a)(1)(A), a plaintiff can dismiss an action without a court order via “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment” or by “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). Here, Defendant has filed an Answer in this action. *See* Doc. [10]; *see also Wilson v. Crouse-Hinds Co.*, 556 F.2d 870, 873 (8th Cir. 1977) (“A unilateral dismissal or amendment cannot be accomplished . . . after an answer has been filed.”); *Welsh v. Correct Care, L.L.C.*, 915 F.3d 341, 344 (5th Cir. 2019) (filing of an amended complaint does not revive the plaintiff’s absolute right to dismissal under Rule 41(a)(1)(A)(i) (citing *Armstrong v. Frostie Co.*, 453 F.2d 914, 916 (4th Cir. 1971))). Thus, this action remains live. To avoid confusion, the Court will instruct the Clerk of Court to strike the ineffective Notice of Voluntary Dismissal.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court is directed to **STRIKE** Plaintiff's Notice of Voluntary Dismissal. Doc. [37].

IT IS FURTHER ORDERED that Plaintiff must abide by the previously ordered deadlines. The failure to do so could result in sanctions as described in the First Amended Case Management Order. *See* Doc. [34].

Dated this 27th day of January 2025.



MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE