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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTIAN COX, a married man;
JOSEPH A. MAYO IV, a married man;
PACIFIC COAST FIBER FUELS, LLC, a
Washington limited liability company,
Plaintiffs,
v.
ALLIANT INSURANCE SERVICES,
INC., d/b/a MOLONEY + O’NEILL, a
Delaware corporation; DAN ROMAIN and
JANE DOE ROMAIN, a marital
community; FARMIN ROTHROCK &
PARROTT, INC., a Washington
corporation; and KELLY EGAN and
JANE DOE EGAN, a marital community,
Defendants.

NO. 2:16-cv-00362-SAB

**ORDER DENYING MOTION
FOR RECONSIDERATION AND
MOTION TO STAY**

Before the Court is Plaintiff Joseph A. Mayo IV (“Mayo”) and Pacific Coast
Fiber Fuels, LLC’s (“PCFF”) Motion for Reconsideration, ECF No. 141, Motion
to Stay Briefing, ECF No. 142, and Motion to Expedite, ECF No. 143. The
motions were heard without oral argument.

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**ORDER DENYING MOTION FOR RECONSIDERATION
AND MOTION TO STAY + 1**

1 **Background**

2 On September 19, 2017, the Court denied Mayo and PCFF’s Motion for
3 Voluntary Dismissal, ECF No. 88, as their Fed. R. Civ. P. 41 notice was
4 ineffective pursuant to Ninth Circuit case law, and required those Plaintiffs to
5 remain in the case. ECF No. 131. On September 29, 2017, Defendants filed a
6 Motion for Judgment on the Pleadings. ECF No. 137. Mayo and PCFF request
7 reconsideration of the Court’s Order requiring them to remain in this case and seek
8 a stay of briefing on Defendant’s motion until such time as the Court rules on their
9 motion for reconsideration. Having reviewed the case law and the submissions of
10 the parties, the Court denies the motions.

11 **Standard**

12 A party may ask the court to reconsider and amend a previous order. Fed R.
13 Civ. P. 59(e) offers “an extraordinary remedy, to be used sparingly in the interests
14 of finality and conservation of judicial resources.” Carroll v. Nakatani, 342 F.3d
15 934, 945 (9th Cir. 2003). A Rule 59(e) motion may be granted when: (1) there is
16 an intervening change in controlling law; (2) the moving party presents newly
17 discovered or previously unavailable evidence; and (3) the motion is necessary to
18 correct manifest errors of law or fact upon which the judgment is based. Turner v.
19 Burlington N. Santa Fe R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003).

20 **Discussion**

21 Mayo and PCFF filed a Motion for Voluntary Dismissal pursuant to Fed. R.
22 Civ. P. 41(a)(1). ECF No. 88. Rule 41(a)(1)(i) permits a party to dismiss their
23 action without court order by notice before a defendant serves an answer or
24 motion for summary judgment. Under Etheridge v. Harbor House Restaurant, 861
25 F.2d 1389 (9th Cir. 1988), a Rule 41 notice of dismissal is ineffective where no
26 defendant is dismissed from the action. Plaintiffs have identified no intervening
27 change of controlling law or newly discovered evidence upon which their motion
28 for reconsideration is based. Additionally, Plaintiffs have identified no manifest

**ORDER DENYING MOTION FOR RECONSIDERATION
AND MOTION TO STAY + 2**

1 error of law or fact. Should Mayo and PCFF wish to dismiss their claims without
2 prejudice, they may seek to amend their complaint. See Etheridge, 861 F.2d 1389.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. Plaintiff Joseph A. Mayo IV and Pacific Coast Fiber Fuels, LLC's
5 Motion for Reconsideration, ECF No. 141, is **DENIED**.

6 2. Plaintiff Joseph A. Mayo IV and Pacific Coast Fiber Fuels, LLC's
7 Motion to Stay Briefing, ECF No. 142, is **DENIED AS MOOT**.

8 3. Plaintiff Joseph A. Mayo IV and Pacific Coast Fiber Fuels, LLC's
9 Motion to Expedite, ECF No. 143, is **GRANTED**.

10 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
11 file this Order and provide copies to counsel.

12 **DATED** this 16th day of October 2017.



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18 Stanley A. Bastian
19 United States District Judge
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