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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENERAL STAR INDEMNITY
COMPANY,

Plaintiff,

v.

FIRST AMERICAN TITLE INSURANCE
COMPANY OF NAPA, et al.,

Defendants.

Case No. [20-cv-03210-TSH](#)

**REQUEST FOR REASSIGNMENT
WITH REPORT &
RECOMMENDATION RE: MOTION
TO DISMISS AND STIPULATION TO
DISMISS CROSS CLAIMS;
STIPULATION TO DISMISS FIRST
AMERICAN’S CLAIMS**

Re: Dkt. No. 102

I. INTRODUCTION

This action arises from a real property transaction whereby certain defendants are alleged to have mistakenly received and retained approximately \$675,000 meant to pay off a loan on the property. Pending before the Court is Plaintiff General Star Indemnity Company’s motion for the Court to dismiss its claims against all named defendants pursuant to Federal Rule of Civil Procedure 41(a)(2). ECF No. 102. While General Star’s motion was pending, the parties also filed a stipulation to dismiss Defendant First American Title Insurance Company’s crossclaims against Defendant Michael Venuta with prejudice pursuant to Rule 41(a)(1)(A)(ii). ECF No. 105. The undersigned finds these matters suitable for disposition without oral argument and **VACATES** the August 19, 2021 hearing. Civ. L.R. 7-1(b). Because not all parties have consented to magistrate judge jurisdiction, the undersigned requests this case be reassigned to a District Judge for disposition. After reviewing the motion and stipulation, and good cause appearing, the undersigned **RECOMMENDS** the District Court **GRANT** General Star’s motion. The undersigned **FURTHER RECOMMENDS** the Court **DENY** the parties’ stipulation and instead **DISMISS** First American’s crossclaims pursuant to Rule 41(a)(2).

II. BACKGROUND

A. Factual Background

This case originated as a declaratory judgment action brought by General Star against First American Title Company of Napa (“First Napa”), First American Title Insurance Company (“First American”), In The Vines LLC, Lisa Mini, and Michael Venuta, to determine the parties’ rights and obligations under an insurance policy issued by General Star to First Napa.

In 2005 Venuta owned real property commonly known as 589 Trancas Street, Unit C, Napa, California (the “Property”). Countercl. ¶¶ 67, 77, ECF No. 21. In February 2005 he borrowed \$1.3 million from Downey Savings and Loan secured by a first position deed of trust against the Property. *Id.* ¶ 77. In 2007 Venuta conveyed his interest in the Property to Mini, subject to the Downey loan and deed of trust. *Id.* ¶ 79. Venuta did not assign the Downey loan to Mini. *Id.* In August 2015 Mini conveyed title to the Property to her company, Vines. *Id.* ¶¶ 67, 80. In September 2015 Downey Bank assigned the promissory note and deed of trust for the loan to US Bank, and an assignment of the promissory note and deed of trust was recorded. *Id.* ¶ 77.

On or about September 27, 2017, First Napa acted as closing agent, escrow agent, and title insurance agent in connection with the purchase and sale of the Property. Compl. ¶ 13, ECF No. 1. Mini and/or her company, Vines, received the proceeds of the sale. *Id.* First Napa was an insured under General Star’s Miscellaneous Professional Liability Insurance Policy No. IJA324715A. *Id.* ¶ 27. First Napa was authorized to issue title insurance policies underwritten by First American pursuant to a limited agency agreement with First American. Countercl. ¶¶ 85-87. First Napa issued two First American title insurance policies for the sale of the Property: (1) an owner’s policy to the buyers; and (2) a lender’s policy to the buyers’ lender. *Id.* ¶ 88. Mini/Vines did not inform First Napa that the US Bank loan needed to be paid off as part of the sale. *Id.* ¶ 91. As a result, Mini/Vines received \$675,493.65 in sale proceeds that should have been paid to US Bank. *Id.* ¶¶ 84, 92.

After the sale, neither Venuta nor Mini/Vines made further payments to US Bank, and the loan went into default. *Id.* ¶ 98. In June 2018 US Bank initiated non-judicial foreclosure proceedings. *Id.* The buyers then tendered a claim to First American under their owners’ title

1 insurance policy. *Id.* ¶ 99. After investigating their claim, First American determined there was
2 coverage. *Id.* ¶ 99. On August 30, 2018, First American paid US Bank \$674,813.66 to satisfy the
3 remaining obligation on the US Bank loan and prevent non-judicial foreclosure. *Id.* ¶ 101.

4 **B. Procedural Background**

5 On May 11, 2020, General Star filed its complaint for declaratory relief against First Napa,
6 First American, Mini, Vines, and Venuta. It seeks a declaration that the policies issued by General
7 Star to First Napa do not afford coverage for claims asserted against First Napa in connection with
8 its handling of the 2017 sale. To bind them to any declaratory relief entered against First Napa,
9 General Star also named as defendants the parties that had asserted claims against First Napa in
10 connection with the transaction: First American; Mini, Vines, and Venuta.

11 On June 25, 2020, General Star dismissed its claims against Venuta. ECF No. 17.

12 On July 10, 2020, First Napa filed its answer and brought counterclaims against General
13 Star for breach of contract, breach of the implied covenant of good faith and fair dealing, and a
14 declaration that it is entitled to defense and indemnity coverage. ECF No. 18.

15 On July 20, 2020, First American filed its answer and brought counterclaims against
16 General Star for declaratory relief; crossclaims against Mini and Vines for constructive trust,
17 unjust enrichment, conversion, unfair business practices, and breach of contract; a crossclaim
18 against Venuta for unjust enrichment; and cross claims against First Napa for declaratory relief
19 and breach of agency agreement. ECF No. 21.

20 On September 24, 2020, Mini and Vines filed crossclaims against First Napa for
21 negligence and breach of fiduciary duty. ECF No. 52. On October 28, 2020, First Napa moved to
22 dismiss Mini and Vines's crossclaims. ECF No. 59. After Mini and Vines failed to oppose the
23 motion, the Court granted First Napa's motion to dismiss on November 20, 2021. ECF No. 67.

24 On February 11, 2021, Graden Tapley, of O'Brien Watters & Davis, LLP moved for leave
25 to withdraw as counsel for Mini and Vines. ECF No. 72. After Mini and Vines failed to respond
26 to the motion or otherwise appear, the Court granted Tapley's motion, on the condition that all
27 papers from the Court and from the other parties in this case continue to be served on Tapley for
28 forwarding purposes until a substitution of counsel was filed. ECF No. 79. Vines has made no

1 subsequent appearance through counsel.

2 On April 7, 2021, First American filed an amended answer and counterclaims/crossclaims
3 to add claims against Mini's companies disclosed during discovery, Light Castle Private Family
4 Management Company, LLC and AZL, LLC. ECF No. 84.

5 On June 10, 2021, General Star, First Napa, First American, and Venuta filed a joint case
6 management statement in which they informed they Court that they agreed to settle their claims
7 against each other. ECF No. 99. Mini, Vines, AZL, and Light Castle did not execute the
8 statement.

9 On July 15, 2021, General Star filed the present motion to dismiss pursuant to Rule
10 41(a)(2).

11 On July 26, 2021, the parties filed a stipulation for dismissal of First American's
12 crossclaims against Venuta pursuant to Rule 41(a)(1)(A)(ii). ECF No. 105.

13 III. DISCUSSION

14 A. General Star's Motion to Dismiss

15 General Star states that all causes of action pending between it and Defendants First Napa,
16 First American, Mini, and Vines were settled on May 18, 2021. Hanifin Decl. ¶ 1, ECF No. 102-
17 2. A settlement agreement was fully executed as of July 12, 2021, and General Star has satisfied
18 its obligations under that agreement other than to seek dismissal of its claims. Hanifin Decl. ¶¶ 1,
19 3. The settlement agreement requires that General Star seek dismissal of its claims no later than
20 July 27, 2021. *Id.* ¶ 3.

21 On July 13, 2021, General Star proposed to dismiss its claims by stipulation pursuant to
22 Rule 41(a)(1)(A)(ii). *Id.* ¶ 4. However, Mini declined to enter into the stipulation, advising
23 General Star by email: "I disagree. My settlement agreement will stay as stated." *Id.* ¶¶ 5, 8. In
24 addition to being a defendant herself, Mini is the sole member of Vines, which is a corporate
25 entity that is no longer represented by counsel. *See* ECF No. 79 (order granting motion to
26 withdraw as counsel for Mini and Vines). General Star seeks entry of an order dismissing its
27 claims for two reasons. First, Mini's declination to consent precludes dismissal by stipulation.
28 Second, because Vines is a corporate entity not represented by counsel, General Star seeks the

1 certainty afforded by the Court's order, which might otherwise be lacking given questions
 2 regarding Mini's willingness or ability to bind Vines in this action. General Star submits that,
 3 consistent with the terms of the parties' settlement with General Star, the Court should dismiss its
 4 claims and seeks an order that dismisses with prejudice General Star's claims against First Napa,
 5 First American, Mini, Vines, and Venuta.¹ All other parties to the settlement have advised
 6 General Star they consent to dismissal of its claims. Hanifin Decl. ¶ 4.

7 **1. Legal Standard**

8 Federal Rule of Civil Procedure 41(a)(2) allows a plaintiff, pursuant to an order of the
 9 court, and subject to any terms and conditions the court deems proper, to dismiss an action at any
 10 time. "When confronted with a motion for voluntary dismissal pursuant to Rule 41(a)(2), the
 11 Court must determine: (1) whether to allow dismissal; (2) whether the dismissal should be with or
 12 without prejudice; and (3) what terms and conditions, if any, should be imposed." *Fraley v.*
 13 *Facebook, Inc.*, 2012 WL 893152, at *2 (N.D. Cal. Mar. 13, 2012) (citing *Williams v. Peralta*
 14 *Cnty. Coll. Dist.*, 227 F.R.D. 538, 539 (N.D. Cal. 2005)). Ruling on a Rule 41(a)(2) motion is
 15 "addressed to the district court's sound discretion." *Westlands Water Dist. v. United States*, 100
 16 F.3d 94, 97 (9th Cir. 1996) (quoting *Stevedoring Servs. of Am. v. Armilla Int'l B.V.*, 889 F.2d 919,
 17 921 (9th Cir. 1989)).

18 **2. Whether to Permit Dismissal**

19 A district court should grant voluntary dismissal "unless a defendant can show that it will
 20 suffer some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).
 21 "Legal prejudice" means "prejudice to some legal interest, some legal claim, some legal
 22 argument." *Id.* (quoting *Westlands*, 100 F.3d at 97). Here, no party has come forward with
 23 evidence of prejudice to their legal interests. In fact, General Star seeks dismissal with prejudice
 24 because it executed a settlement agreement for all causes of action pending between it and
 25 Defendants First Napa, First American, Mini, and Vines. Thus, as to those parties, dismissal is
 26 appropriate.

27 _____
 28 ¹ Although Venuta is not a party to the settlement agreement, General Star also seeks dismissal of
 its claims against him. Mot. at 3.

1 However, the requested dismissal does not dispose of the entire case, as it does not include
2 any counterclaims and/or crossclaims asserted by the other parties. Thus, the Court must consider
3 the effect of the dismissal on other parties to the litigation. *See Fraley*, 2012 WL 893152, at *2
4 (citations omitted). Although the settlement agreement does not include Venuta, he has not
5 objected to General Star’s motion, and he has not otherwise shown that he will suffer any
6 prejudice if its claims are dismissed. Regardless, the Ninth Circuit has held that legal prejudice
7 does not result from “[u]ncertainty because a dispute remains unresolved.” *Westlands*, 100 F.3d at
8 97. Accordingly, the undersigned finds that dismissing General Star’s claims will not prejudice
9 Venuta. *See Fraley*, 2012 WL 893152, at *3 (finding no prejudice where remaining defendant did
10 not assert that it will suffer any prejudice if plaintiffs’ claims against other defendants were
11 dismissed).

12 Further, while General Star indicated that Mini objects to dismissal, the undersigned notes
13 that dismissal would include General Star’s claims against her and Vines, and she has come
14 forward with no evidence to show that such dismissal would result in legal prejudice. While
15 General Star sought declaratory relief against Mini and Vines, neither Mini nor Vines have
16 asserted any claims against General Star in this action. Other than seeking dismissal of its claims,
17 General Star has no unsatisfied obligations under the settlement to any party, including Mini and
18 Vines. Hanifin Decl. ¶ 3. Mini and Vines also have no unsatisfied obligations to General Star
19 under the settlement. *Id.*

20 Accordingly, because no defendant has shown they will suffer some plain legal prejudice
21 as a result of dismissal, the undersigned recommends the Court grant General Star’s motion. *See*
22 *Sinnott v. DSW Shoe Warehouse, Inc.*, 2020 WL 6384493, at *2 (N.D. Cal. Apr. 6, 2020)
23 (dismissing claims where defendant did not file a response to plaintiffs’ motion to dismiss under
24 Rule 41(a)(2) and had not otherwise indicated it would suffer legal prejudice as a result of
25 dismissal); *Adlife Mktg. & Commc’ns Co., Inc. v. Popsugar, Inc.*, 2020 WL 1478379, at *2 (N.D.
26 Cal. Mar. 26, 2020) (“Thus, because the matter is undisputed, the Court concludes that Defendant
27 will not suffer any prejudice from a dismissal of Plaintiff’s complaint.”).

1 **3. Dismissal With or Without Prejudice**

2 Next, the Court must determine whether to dismiss General Star’s claims with or without
3 prejudice. In so doing, courts consider: “(1) the defendant’s effort and expense involved in
4 preparing for trial; (2) excessive delay and lack of diligence on the part of the plaintiff in
5 prosecuting the action; and (3) insufficient explanation of the need to dismiss.” *Fraley*, 2012 WL
6 893152, at *3 (citing *Burnette v. Godshall*, 828 F. Supp. 1439, 1443-44 (N.D. Cal. 1993)). Here,
7 none of these factors appear to be at issue. General Star seeks dismissal with prejudice, so there is
8 no concern that the dismissed defendants will be exposed to duplicative litigation. Further, no
9 party has objected to General Star’s motion based on their efforts or expenses to date, the
10 settlement agreement was executed in May 2021 and there is no evidence of delay or lack of
11 diligence on General Star’s part, and the parties’ settlement agreement provides a sufficient
12 explanation for General Star’s request for dismissal. Accordingly, dismissal with prejudice is
13 appropriate.

14 **4. Terms and Conditions of Dismissal**

15 Finally, the Court must determine if it should impose any terms and conditions upon
16 dismissal. *See Fraley*, 2012 WL 893152, at *3; Fed. R. Civ. P. 41(a)(2) (court may dismiss claims
17 “on terms that the court considers proper”). However, because the settling parties have agreed to
18 resolve their disputes to the satisfaction of all parties involved, and dismissal is with prejudice,
19 there is no need to impose any such terms or conditions. *See Williams*, 227 F.R.D. at 540 (noting
20 that courts must consider whether to award costs to a defendant after a defendant after a voluntary
21 dismissal *without* prejudice); *Stevedoring Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 921
22 (9th Cir. 1989) (“[N]o circuit court has held that payment of the defendant’s costs and attorney
23 fees is a prerequisite to an order granting voluntary dismissal.”).

24 **B. Stipulation to Dismiss First American’s Crossclaims**

25 First American seeks to dismiss its crossclaims against Venuta, and all parties seem to be
26 in agreement. ECF No. 105. While the stipulation is not signed by Mini’s companies (Vines,
27 AZL, and Light Castle), the parties state that it is brought by all parties, including Mini “*in pro*
28 *per*, and the sole manager and member of defendant/counterclaimant/counterdefendant In The

1 Vines, LLC [] and counterdefendants AZL, LLC [] and Light Castle Private Family Management,
2 LLC.” *Id.* at 2.

3 Rule 41(a)(1)(A)(ii) permits dismissal without a court order by stipulation “signed by all
4 parties who have appeared.” AZL and Light Castle have made no appearance, so their signature is
5 not required. However, Vines filed an answer on September 24, 2020, ECF No. 52, and any
6 stipulation must therefore include it. As noted above, the Court granted Vines’s counsel’s motion
7 to withdraw, ECF No. 79, and Vines has made no subsequent appearance through counsel. Civil
8 Local Rule 3-9(b) provides that “[a] corporation, unincorporated association, partnership or other
9 such entity may appear only through a member of the bar of this Court.” Thus, dismissal pursuant
10 to Rule 41(a)(1)(A)(ii) is not permitted unless Vines appears through counsel and executes a
11 stipulation with all parties that have appeared. Instead, the Court may dismiss First American’s
12 crossclaims pursuant to Rule 41(a)(2) where, as here, no defendant has shown that it will suffer
13 some plain legal prejudice. In fact, the record reflects that all parties are in agreement, including
14 Mini, the sole manager and member of Vines. Accordingly, the undersigned recommends the
15 District Court dismiss First American’s crossclaims pursuant to Rule 41(a)(2).

16 **IV. CONCLUSION**

17 Based on the above analysis, the undersigned **RECOMMENDS** the District Court
18 **GRANT** Plaintiff General Star Indemnity Company’s motion and **DISMISS WITH**
19 **PREJUDICE** all claims brought by it against Defendants First American Title Company of Napa,
20 First American Title Insurance Company, Lisa Mini, In The Vines, LLC, and Michael Venuta.
21 The Court **FURTHER RECOMMENDS** the District Court **DISMISS WITH PREJUDICE**
22 First American Title Insurance Company’s crossclaims against Defendant Michael Venuta.

23 Based on the parties’ June 10, 2021 joint case management statement, it appears that most
24 (if not all) remaining claims have also been resolved. However, because certain claims brought by
25 First Napa and First American remain pending and are not addressed in the parties’ stipulation, the
26 undersigned **FURTHER RECOMMENDS** the District Court direct the parties to file dismissals
27 or a status report within 14 days of its order.

28 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2), any party

1 may serve and file any objections to this recommendation within 14 days after being served.
2 Failure to file objections within the specified time may waive the right to appeal the district
3 court's order.

4 **IT IS SO RECOMMENDED.**

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Dated: August 6, 2021


THOMAS S. HIXSON
United States Magistrate Judge

United States District Court
Northern District of California