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JS-6

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ASAF AGAZANOF, individually, and)	Case No. 2:14-cv-01125-DDP-SH
on behalf of other members of the)	
general public similarly situated,)	ORDER
)	
Plaintiff,)	
)	
vs.)	
)	
SKINNY CRISPS, INC., a Colorado)	
corporation,)	
)	
Defendants.)	
)	

THE COURT, having received and reviewed the Joint Motion to Dismiss the Individual Claims with Prejudice, and the Putative Class Claims without Prejudice, and being otherwise advised in the premises, hereby GRANTS the Motion.

Pursuant to Rule 41(a)(1)(A)(i), a plaintiff may dismiss an action voluntarily upon notice without leave of court, where a defendant has not yet

1 answered or filed a motion for summary judgment. Likewise, pursuant to Rule
2 41(a)(1)(A)(ii), the parties may dismiss an action without leave of court upon
3 filing a stipulation of dismissal signed by all parties who have appeared. These
4 procedures, however, are limited by Rule 23(e).

5
6 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or
7 defenses of a *certified* class may be settled, voluntarily dismissed, or
8 compromised only with the court’s approval.” Fed.R.Civ.P. 23(e) (emphasis
9 added).
10

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12 Because no class has been certified in this case, the requirements of Rule
13 23(e), as amended in 2003, do not apply to the Joint Motion. *See* Fed.R.Civ.P.
14 23(e), adv. comm. notes, 2003 amds. (“The new rule requires approval only if
15 the claims, issues, or defenses of a certified class are resolved by a
16 settlement...”). Even though the procedures of Rule 23(e) do not apply to the
17 Joint Motion to Dismiss, the Court may still consider whether to “require ...
18 giving appropriate notice to some or all class members,” Fed.R.Civ.P.
19 23(d)(1)(B), and “ ‘whether the proposed settlement and dismissal are tainted by
20 collusion or will prejudice absent putative members with a reasonable ‘reliance’
21 expectation of the maintenance of the action for the protection of their interests.’”
22 *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1407 n. 3 (9th Cir.1989)
23 (quoting *Shelton v. Pargo*, 582 F.2d 1298, 1315 (4th Cir.1978)). The Court also
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1 may “inquire into possible prejudice from ... lack of adequate time for class
2 members to file other actions, because of a rapidly approaching statute of
3 limitations.” *Id.* at 1408 (citation omitted).
4

5 Assuming without deciding that Rule 23 applies, *Del Rio v. CreditAnswers,*
6 *LLC*, 2011 WL 1869881 at *2 (S.D.Cal. No. 10CV346-WQH-BLM, May 16,
7
8 2011); *Ramirez v. Cintas Corp.*, 2009 WL 921629 (N.D.Cal. No. C04-00281-
9 JSW, April 3, 2009), the Court concludes that, based on the factors outlined in
10 *Diaz*, it is appropriate to grant the Joint Motion and dismiss Plaintiff’s individual
11 claims with prejudice, and the putative class claims without notice and without
12 prejudice.
13

14
15 First, according to the Declaration from Plaintiff’s counsel, there has been
16 no publicity of this case, and Plaintiff’s counsel is unaware of any other putative
17 class member knowing or potentially relying upon the pendency of this action to
18 protect his or her interests. Plaintiff’s counsel has not spoken to other putative
19 class members, and is unaware of any other actions pending against Defendant.
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22 Second, the parties do not seek to dismiss the putative class claims with
23 prejudice and, therefore, the dismissal will not impact the rights of potential class
24 members.
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26 Third, the statute of limitations has been tolled since the suit was filed. *See*
27 *American Pine and Construction v. Utah*, 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed.2d
28

1 713 (1974), and the potential statute of limitations of the putative class claims
2 range from two to four years. Potential class members who may have relied on
3 the Plaintiff's claims still have time to file suit if they so choose.
4

5 Fourth, the settlement is not collusive. According to the declaration
6 submitted by Plaintiff's counsel, Plaintiff received the same approximate amount
7 of damages had the case gone forward to judicial resolution in his favor, and did
8 not receive consideration specifically to file a voluntary dismissal.
9

10 IT IS HEREBY ORDERED that, pursuant to the Joint Motion of the
11 parties and Federal Rules of Civil Procedure 41(a)(1)(A)(i) and (ii), the individual
12 claims are hereby DISMISSED WITH PREJUDICE, and the putative class claims
13 are hereby DISMISSED WITHOUT PREJUDICE. Each party shall bear their
14 own costs and fees.
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19 Dated: June 02, 2014

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24 The Honorable Judge Dean D. Pregerson
25 UNITED STATES DISTRICT JUDGE
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