

1 L. Paul Mankin, IV (SBN 264038)
2 LAW OFFICES OF L. Paul Mankin, IV
3 8730 Wilshire Blvd., Suite 310
4 Beverly Hills, California 90211
5 Tel: (310) 776-6336
6 Fax: (323) 207-3885
7 pmankin@paulmankin.com
8 Attorney for Plaintiff

7 Edgerton & Weaver, LLP
8 Samuel Y. Edgerton, III (SBN 127156)
9 Megan Hayati (SBN 271888)
10 Hermosa Beach, CA 90254
11 Phone: 310-937-2066
12 Fax: 310-937-2064
13 Attorney for Defendant

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

15 ASAF AGAZANOF, individually, and) Case No. 2:14-cv-01125-DDP-SH
16 on behalf of other members of the)
17 general public similarly situated,) **JOINT REQUEST TO DISMISS**
18 Plaintiff,) **THE INDIVIDUAL CLAIMS WITH**
19 vs.) **PREJUDICE AND THE PUTATIVE**
20) **CLASS CLAIMS WITHOUT**
21 SKINNY CRISPS, INC., a Colorado) **PREJUDICE**
22 corporation,)
23 Defendant.)
24)

25 NOW COME THE PARTIES by and through their attorneys to respectfully
26 move this Honorable Court to dismiss the individual claims with prejudice and
27
28

1 the putative class claims without prejudice pursuant to Federal *Rules of Civil*
2 *Procedure* 41(a)(1)(A)(ii), and state:

3 1. Plaintiff commenced this action on January 9, 2014, asserting claims
4 for violation of the California Unfair Competition Law, violation of the
5 Consumers Legal Remedies Act, Negligent Misrepresentation, and Breach of
6 Quasi-Contract. Plaintiff styled it as a proposed class action complaint, for
7 himself and on behalf of “other members of the general public similarly situated.”
8
9

10 2. On February 13, 2014, Defendant timely removed the action to this
11 Court under federal question as well as diversity jurisdiction, and pursuant to the
12 Class Action Fairness Act, 28 U.S.C. § 1332(d).
13

14 3. On March 12, 2014, Plaintiff filed a “Notice of Settlement” in this
15 action, alerting the Court that the Plaintiff and Defendant had reached settlement
16 of the individual claims.
17

18 4. Defendant has not answered or filed a motion for summary
19 judgment. No default has entered.
20

21 5. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), an action may be
22 dismissed without leave of court where the plaintiff files a notice of dismissal
23 before the opposing party serves either an answer or a motion for summary
24 judgment. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), an action may also be
25 dismissed without leave of court where the parties stipulate to dismissal.
26
27
28

1 6. Rule 41(a)(1) is limited by Rule 23(e), governing settlement or
2 dismissal of certified class actions. However, because this action has not been
3 certified as a class action, Rule 23(e) review of any settlement or dismissal is
4 inapplicable and unnecessary. *See* Fed. R. Civ. P. 23(e) adv. comm. notes, 2003
5 amds. at ¶ 16 (“The new rule requires approval only if the claims, issues, or
6 defenses of a certified class are resolved by a settlement, voluntary dismissal, or
7 compromise”); *Del Rio v. CreditAnswers, LLC*, 2011 WL 1869881 at *2
8 (S.D.Cal. No. 10CV346-WQH-BLM, May 16, 2011); *Ramirez v. Cintas Corp.*,
9 2009 WL 921629 (N.D.Cal. No. C04-00281-JSW, April 3, 2009); *accord* 2
10 *McLaughlin on Class Actions* § 6:1 (update Dec. 2013) (“Because putative class
11 members are not bound by any proceedings in a purported class action prior to a
12 ruling on class certification, the new rule does not require that they receive notice
13 of a proposed dismissal of a putative class action.”).

14 7. The Court retains jurisdiction to ensure that a dismissal is not
15 collusive or prejudicial to absent putative members who might have relied upon
16 the action for protection of their interests. *Diaz v. Trust Territory of the Pac.*
17 *Islands*, 876 F.2d 1401, 1407 n.3 (9th Cir. 1989). However, as detailed below, no
18 collusion or prejudice exists as a result of the dismissal of this action and
19 therefore, notice to any potential putative class members should not be required.
20
21
22
23
24
25
26
27
28

1 8. First, pursuant to this Notice and Joint Motion, the Parties seek
2 dismissal of individual plaintiff Agazanof's claims with prejudice, but seek
3 dismissal of the putative class claims without prejudice. Putative class members
4 are free to assert their own claims against Defendant should they choose to do so.
5 The dismissal of the putative class claims without prejudice will not impact the
6 class because they are not yet party to the action or otherwise bound by the
7 action. Second, there has not been any reliance on this action by any putative class
8 member. Plaintiff is unaware of any publicity of the pendency of this action, has
9 received no inquiries from any other putative class members, and this settlement
10 has been reached very early in the case, prior to any discovery or identification of
11 putative class members. *See* Declaration of Paul Mankin, at ¶ 5.

12 9. Third, there are no concerns that putative class members might be
13 prejudiced by any rapidly approaching statute of limitations. The allegations in
14 the Complaint concern acts as recent as 2014. The statute of limitations for the
15 putative class claims range from two to four years. *See e.g.* Cal. Bus. & Prof.
16 Code § 17208 (four-year statute for Unfair Competition Law claim); Cal. Civ.
17 Code § 1783 (three-year statute for Consumer Legal Remedies Act claim); Cal.
18 Code of Civ. P. § 338(d) (three-year statute for fraud or misrepresentation claim);
19 Cal. Code of Civ. Pro. § 339 (two-year statute on oral contract claim). Therefore,
20
21
22
23
24
25
26
27
28

1 the dismissal of this action will not prejudice potential putative class members in
2 regards to any approaching statute of limitations.

3 10. Fourth, the terms of the settlement are not collusive. In the
4
5 Complaint, Plaintiff seeks compensatory damages, injunctive relief to enjoin
6 Defendant's business practice, "full restitution of all funds acquired" from the
7
8 sale of misbranded products, statutory enhanced damages, punitive damages, and
9
10 punitive damages. *See* Complaint at ¶ 84. Plaintiff also seeks disgorgement of all
11
12 amounts earned by Defendant, and "imposition of a constructive trust upon all
13
14 profits, benefits and compensation obtained" by Defendant. *See* Complaint at ¶
15
16 81. The amount of damages recovered by Plaintiff in settlement is the same
17
18 approximate amount of these damages had the case gone forward to judicial
19
20 resolution in his favor. Plaintiff and Plaintiff's counsel did not receive monetary
21
22 consideration specifically to file a voluntary dismissal, separate from the
23
24 settlement of his individual claims. *See* Declaration of Paul Mankin, at ¶ 9.

25 11. Thus, as a result of this dismissal there is no prejudice to the absent
26
27 members of a putative class, and therefore no notice is necessary to any putative
28
29 class members. The action should be dismissed (with prejudice as to Plaintiff
30
31 Agazanof's individual claims, and without prejudice as to the putative class
32
33 claims), each party shall bear their own costs and fees.

1 12. A proposed order has been concurrently submitted to this Court via
2 email.
3
4

5 Respectfully submitted this 30th day of May, 2014.

6 By: s/L. Paul Mankin, Esq.
7 LAW OFFICES OF L. Paul Mankin, IV
8 Attorney for Plaintiff ASAF AGAZANOF

9 By: s/ Megan Hayati, Esq.
10 Edgerton & Weaver, LLP
11 Attorney for Defendant SKINNY CRISPS,
12 INC.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Megan Hayati, Esq., counsel for Defendants, SKINNY CRISPS, INC. and that I have obtained Ms. Hayati's authorization to affix their electronic signature to this document.

Dated: May ____, 2014

Respectfully submitted,

LAW OFFICES OF L. Paul Mankin, IV

By: s/L. Paul Mankin, Esq.
L. Paul Mankin, IV, Esq.
Attorney for Plaintiff

1 Filed electronically on this ___ day of May, 2014, with:

2 United States District Court CM/ECF system

3 Notification sent electronically via the Court's ECF system to:

4
5 Honorable Judge Dean D. Pregerson
6 United States District Court
7 Central District of California

8 **Megan Hayati**
9 Edgerton & Weaver LLP
10 Email: mhayati@edgertonweaver.com

11 **Samuel Y Edgerton , III**
12 Edgerton and Weaver LLP
13 Email: sedgerton@edgertonweaver.com

14 This ___th day of May, 2014.

15 By: s/L. Paul Mankin, Esq.
16 L. Paul Mankin, IV, Esq.

1 L. Paul Mankin, IV (SBN 264038)
2 LAW OFFICES OF L. Paul Mankin, IV
3 8730 Wilshire Blvd., Suite 310
4 Beverly Hills, California 90211
5 Tel: (310) 776-6336
6 Fax: (323) 207-3885
7 pmankin@paulmankin.com
8 Attorney for Plaintiff

9 Edgerton & Weaver, LLP
10 Samuel Y. Edgerton, III (127156)
11 Megan Hayati (271888)
12 Hermosa Beach, CA 90254
13 Phone: 310-937-2066
14 Fax: 310-937-2064
15 Attorney for Defendant

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

18 ASAF AGAZANOF, individually, and) Case No. 2:14-cv-01125-DDP-SH
19 on behalf of other members of the)
20 general public similarly situated,) **DECLARATION OF L. PAUL**
21) **MANKIN**
22 Plaintiff,)
23 vs.)
24 SKINNY CRISPS, INC., a Colorado)
25 corporation,)
26 Defendants.)
27)
28)

29 I, L. Paul Mankin, declare:

30 1. I have personal knowledge of each of the facts set forth below, and
31 can testify to them, and make this declaration under the penalty of perjury.

1 2. I am counsel of record for Plaintiff Asaf Agazanof in this matter.

2 3. Although the Complaint in this action was styled as a Class Action
3 Complaint, no class has been certified by any court in relation to the Complaint or
4 the claims asserted therein.

5 4. I am unaware of any persons other than the named Plaintiff who
6 believe that they are aggrieved by Defendant's Actions.

7 5. Based on my research and investigation into the facts and
8 circumstances of this case, the existence of this action has not become widely
9 known. I am unaware of any public reporting or dissemination of any
10 information about this case other than what is available through public filing
11 records. Additionally, no discovery of identification of putative class members
12 has occurred in this case.

13 6. I am unaware of any putative class member who has refrained from
14 bringing a similar claim in reliance on the existence of this action. No putative
15 class member has contacted me concerning this action. I am not aware of any
16 other legal action having been filed against Defendant related to the facts and
17 circumstances alleged in the Complaint.

18 7. The settlement agreement between Plaintiff and Defendant does not
19 compromise or settle the putative class claims. Plaintiff and Defendant have
20 agreed that the putative class claims would be dismissed without prejudice. The
21 parties have agreed to this compromise due to the risk and uncertainty of
22 litigation.

23 8. In the Complaint, Plaintiff seeks compensatory damages, injunctive
24 relief to enjoin Defendant's business practice, "full restitution of all funds
25 acquired" from the sale of misbranded products, statutory enhanced damages,
26 punitive damages, and punitive damages. *See* Complaint at ¶ 84. Plaintiff also
27 seeks disgorgement of all amounts earned by Defendant, and "imposition of a
28

1 constructive trust upon all profits, benefits and compensation obtained” by
2 Defendant. *See* Complaint at ¶ 81.

3 9. The amount of damages recovered by Plaintiff in settlement is the
4 same approximate amount of these damages had the case gone forward to judicial
5 resolution in his favor. Plaintiff and undersigned counsel did not receive
6 monetary consideration specifically to file a voluntary dismissal, separate from
7 the settlement of Plaintiff’s individual claims.

8
9 Dated this 30th day of May, 2014.

10
11 /s/ L. Paul Mankin, IV
12 L. Paul Mankin, IV

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ASAF AGAZANOF, individually, and on behalf of other members of the general public similarly situated,)	Case No. 2:14-cv-01125-DDP-SH
)	
)	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).

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

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
24
25
26
27
28

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.
20
21

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.
25

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.
15
16
17
18

19 Dated this ____ day of _____, 2014.
20

21
22 _____
23 The Honorable Judge Dean D. Pregerson
24
25
26
27
28