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17 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

18 DUANE ROBERT GREENE, SHAWN )  
19 RANDALL THOMAS, JAMES )  
20 HIRTZEL, ANTHONY SWETALA, and )  
SPRAGUE SIMONDS on behalf of )  
21 themselves and all others similarly )  
22 situated, )

23 Plaintiffs, )

24 v. )

25 )  
26 FIVE PAWNS, INC., )

27 Defendant. )  
28 )

Case No. 8:15-cv-01859-DOC-DFM

**JOINT STIPULATION RE  
DISMISSAL**

**Fed. R. Civ. P. 41(a)(1)(ii)**

Courtroom: 9D

Judge: Hon. David O. Carter

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**STIPULATION RE DISMISSAL**

Plaintiffs Duane Robert Greene, Shawn Randall Thomas, James Hirtzel, Anthony Swetala, and Dr. Sprague Simonds on behalf of themselves and all others similarly situated (collectively, “Plaintiffs”) and Defendant Five Pawns, Inc. (“Defendant”)(Plaintiffs and Defendant shall collectively be referred to as “the Parties”), by and through their attorneys of record, hereby stipulate and agree to the following:

WHEREAS, Plaintiffs Duane Robert Greene, Shawn Randall Thomas, and James Hirtzel, individually and on behalf of themselves and all others similarly situated filed this action on November 11, 2015.

WHEREAS, on December 14, 2015, a First Amended Complaint was filed, which, among other things, added two named plaintiffs, Anthony Swetala and Dr. Sprague Simonds.

WHEREAS, following an April 18, 2016 order by the Court, which granted, in part, Five Pawns’ motion to dismiss the First Amended Complaint, Plaintiffs, on May 9, 2016, filed a Second Amended Complaint, which asserts claims for 1) Cal. Consumers Legal Remedies Act, (2) Cal. Unfair Competition Law, (3) Cal. False Advertising Law, (4) Indiana Deceptive Consumer Sales Act, (5) N.Y. Gen. Bus. Law, and (6) Vermont Consumer Protection Act.

WHEREAS, the Parties have reached an agreement (“Settlement Agreement”) resolving the individual claims asserted by Plaintiffs in this lawsuit.

1           WHEREAS, as a material term of the Settlement Agreement, Plaintiffs have  
2 agreed to dismiss the entire action, with their individual claims being dismissed  
3 with prejudice and the class allegations being dismissed without prejudice.

4  
5           WHEREAS, Fed. R. Civ. P. 41(a)(1)(A)(ii) allows a plaintiff to voluntarily  
6 dismiss an action without court order by filing a stipulation of dismissal signed by  
7 all parties who have appeared. *See Duke Energy Trading & Mktg. v. Davis*, 267  
8 F.3d 1042, 1049 (9<sup>th</sup> Cir. 2011)(explaining that voluntary dismissal under Rule  
9 41(a)(1)(A) “requires no action on the part of the court”).

10           WHEREAS, no motion for class certification has been filed and no class has  
11 been certified.

12  
13           WHEREAS, this dismissal will cause no prejudice to absent putative class  
14 because the Settlement Agreement binds only the individual class representatives  
15 and does not release the class claims.

16  
17           WHEREAS, Fed. R. Civ. P. 41(a)(1)(A) is expressly subject to the 2003  
18 modifications of Fed. R. Civ. P. 23(e) which eliminated any need for Court  
19 approval or notice to the putative class when a class representative voluntarily  
20 dismisses class allegations before a class has been certified:

21  
22           Rule 23(e)(1)(A) resolves the ambiguity in former Rule 23(e)’s  
23 reference to dismissal or compromise of “a class action.” That  
24 language could be—and at times was—read to require court approval  
25 of settlements with putative class representatives that resolved only  
26 individual claims [Citation.] The new rule requires approval *only* if  
27 the claims, issues, or defenses of a *certified* class are resolved by a  
28 settlement, voluntary dismissal, or compromise. Subdivision (e)(1)(B)

1 carries forward the notice requirement of present Rule 23(e) when the  
2 settlement binds the class through claim or issue preclusion; notice is  
3 not required when the settlement binds only the *individual* class  
4 representatives.

5  
6 Committee Notes on Rules—2003 Amendment (emphasis added); *see also*  
7 *Physicians Healthsource, Inc. v. Reliant Techs.*, 2013 U.S. Dist. LEXIS 82058, \*3  
8 (N.D. Cal. June 11, 2013) (“The language makes it clear that Rule 23(e) applies  
9 only to cases in which a class has been certified. Accordingly, court approval is not  
10 needed for voluntary dismissal of this action pursuant to Rule 41 (a)(1)(A)(ii).”);  
11 *Jackson v. Innovative Sec Servs., LLC*, 283 F.R.D. 13, 15 (D.D.C. 2012) (“The  
12 purpose of Rule 23(e) is to protect the rights of nonparty members of the  
13 class...However, this matter was never certified pursuant to Rule 23(b)(2). As  
14 such, plaintiffs’ request for dismissal of the class action is appropriate under  
15 Federal Rule 41(a)(1).”); *Wynn v. Nat’l Broad Co.*, No. CV00-11248-SVW(RZX),  
16 2002 WL 31681865, at \*1 (C.D. Cal. Mar. 6, 2002 (dismissing action under Rule  
17 41(a)(1)(A) because “no approval is required by the Court pursuant to Rule 23(e),  
18 since there is no certified class action at this point.”).

19 IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN the  
20 parties hereto, through their attorneys of record, that for all the foregoing reasons,  
21 this action shall be dismissed with Plaintiffs’ individual claims dismissed with  
22 prejudice and the class allegations dismissed without prejudice.

23  
24 DATED: April 3, 2017

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

25  
26 By: /s/ Rachele R. Rickert  
RACHELE R. RICKERT

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*Counsel for Plaintiffs*

DATED: April 3, 2017

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By: /s/ John E. Bowerbank

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**ATTESTATION REGARDING SIGNATURES**

I, Rachele R. Rickert, attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: April 3, 2017

By: /s/ Rachele R. Rickert  
RACHELE R. RICKERT

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