

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ROBERT GREER, et al.,)
)
 Plaintiffs,)
)
 v.) No.: 3:20-CV-262-KAC-DCP
)
 CAROL HAGEN, d/b/a TENNESSEE)
 ARTISAN HONEY,)
)
 Defendant.)

ORDER GRANTING MOTION TO DISMISS

This matter is before the Court on a “Motion to Dismiss With Prejudice” [Doc. 71] filed by Plaintiffs Robert Greer, Jeffrey Riemer, Jane Barker, Tucker Goodman, Amber Turner, and Dolores Bowers (collectively, “Plaintiffs”). For the reasons set forth below, the Court grants Plaintiffs’ Motion to Dismiss.

On June 12, 2020, Plaintiffs filed a complaint against (1) Defendants Strange Honey Farm, LLC; Gary Strange, and Fonda Strange (the “Strange Defendants”); (2) Ingles Markets, Inc. and K-VA-T Food Stores, Inc. (the “Retail Defendants”); and (3) Defendant Carol Hagen, d/b/a Tennessee Artisan Honey [Doc. 1]. Thereafter, the Court dismissed Plaintiffs’ claims against the Strange Defendants and Retail Defendants [Docs. 50, 51]. On May 19, 2023, Plaintiffs and Defendant Hagen filed a “Joint Stipulation for Dismissal With Prejudice” “pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii),” seeking to dismiss “the sole remaining” claim against Defendant Hagen with prejudice “for the purpose of expediting [Plaintiffs’] appeal” [Doc. 68 at 1; *see also* Doc. 69 at 1-2]. Neither the Strange Defendants nor the Retail Defendants signed the Joint Stipulation [*See* Doc. 68].

On June 16, 2023 Plaintiffs filed a “Notice of Appeal” [Doc. 69]. No further action was taken by the Parties before this Court until Plaintiffs filed their Motion to Dismiss on November 22, 2023. In the Motion to Dismiss, Plaintiffs “request that this Court enter an order dismissing” the remaining claim against Defendant Hagen “with prejudice for the purpose of expediting their appeal” [See Doc. 71 at 2]. The Strange Defendants and Retail Defendants responded and requested “a hearing concerning only entry of a final judgment” [Doc. 72 at 1-2]. It does not appear that the Strange Defendants or Retail Defendants oppose the substantive relief Plaintiffs request in the Motion to Dismiss. Defendant Hagen did not respond. On December 15, the Sixth Circuit entered an order holding the appeal of this action in abeyance pending this Court’s resolution of Plaintiffs’ Motion to Dismiss. *See Greer et al. v. Carol Hagen, et al.*, No. 23-5589 (6th Cir. Dec. 15, 2023).

As an initial matter, this Court has “an independent obligation to examine its own jurisdiction before proceeding to the merits.” *See In Re Flint Water Cases*, 63 F.4th 486, 497 (6th Cir. 2023). Generally, when a party files a timely notice of appeal, that action divests the district court of jurisdiction. *See, e.g., Williamson v. Recovery Ltd. P’ship*, 731 F.3d 608, 626 (6th Cir. 2013). This general rule, however, is not “inflexible.” *See Cochran v. Bikel*, 651 F.2d 1219, 1221 (6th Cir. 1981). For example, “a notice of appeal from a plainly nonappealable final order may properly be ignored by the district court.” *See id.* at 1222.

To be effective, a stipulation under Rule 41(a)(1)(A)(ii), must be “signed by all parties who have appeared.” *See Fed. R. Civ. P. 41(a)(1)(A)(ii)*. “[T]he plain meaning of ‘all parties who have appeared’” includes “all entities who have appeared in the action as parties.” *Anderson-Tully Co. v. Fed. Ins. Co.*, 347 F. App’x 171, 176 (6th Cir. 2009). Indeed, “all means all.” *See City of Jacksonville v. Jacksonville Hosp. Holdings, L.P.*, 82 F.4th 1031, 1038 (11th Cir. 2023)


(citing *Anderson-Tully Co.*, 347 F. App'x at 176). Here, the “Joint Stipulation for Dismissal With Prejudice” was ineffective because it was not signed by “all entities who have appeared in the action as parties” [See Doc. 68]. See *Anderson-Tully Co.*, 347 F. App'x at 176. Accordingly, this Court retained jurisdiction over this action because Plaintiffs filed a notice of appeal when this action was “plainly nonappealable.” See *Cochran*, 651 F.2d at 1222.

On the merits, Rule 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms the court considers proper.” See Fed. R. Civ. P. 41(a)(2). “With appropriate explanation, a district court is free to exercise its discretion to dismiss with or without prejudice and to determine the terms of the dismissal.” See *Est. of Chubb v. Daimler Trucks N. Am. LLC*, 850 F. App'x 358, 361 (6th Cir. 2021). Rule 41(a)(2) requires consideration of “the equities of the case,” including the potential “adverse[] affect[s]” on “the defendant or” “other parties.” See *Pedreira v. Sunrise Children’s Servs., Inc.*, 79 F.4th 741, 749-50 (2023).

Here, it is appropriate to grant Plaintiffs’ Motion to Dismiss with prejudice. By signing the Joint Stipulation in May 2023, Defendant Hagen previously agreed that the dismissal of Plaintiffs’ claim against her with prejudice was proper [See Doc. 68]. And she raises no opposition now. Neither the Strange Defendants nor the Retail Defendants articulate any substantive opposition to the Motion to Dismiss. Procedurally, this Court does not need or desire a hearing to adjudicate the motion. See E.D. Tenn. L.R. 7.2 (“Motions will be disposed of routinely as soon as possible after they become at issue, unless a hearing has been requested and granted or unless the Court desires a hearing on the motion(s).”). Weighing the equities, dismissal on these terms and in this circumstance is proper and is not unfair to any nonmoving party. See *Pedreira*, 79 F.4th at 751 (concluding that where a party fails to “identify any claims or defenses that would be foreclosed by dismissal,” dismissal likely does not “so adversely impact their interests” such that

a court should deny a motion to voluntarily dismiss). Accordingly, the Court **GRANTS** Plaintiffs’ “Motion to Dismiss With Prejudice” [Doc. 71]. The Court **DENIES as MOOT** Plaintiffs’ “Motion to File, *Instantly*, Reply in Support of the Motion to Dismiss With Prejudice” [Doc. 73]. An Appropriate judgment will enter.

SO ORDERED.


KATHERINE A. CRYTZER
United States District Judge