

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

Ramos v. Funding Rush, Inc.

No. 1:23-cv-01016-KES-HBK (E.D. Cal. Sept. 9, 2025) · No. 1:23-cv-01016-KES-HBK · Decided September
9, 2025

OPINION

Ramos

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

10 11 TRINIDAD RAMOS, an individual; DIANA Case No. 1:23-cv-01016-KES-HBK RAMOS,
an individual and ERIC L. RAMOS, 12 an individual, ORDER DISREGARDING
STIPULATION PURSUANT TO FED. Plaintiffs,

13 R. CIV. P. 41

14 v. (Doc. No. 132) 15 FUNDING RUSH, INC., a California Corporation; ANDREW ADRIAN
DOLI, an 16 individual, RALPH MARTINEZ, an individual; JAY TURNER, an individual;
LENNAR TITLE, 17 INC., a California Corporation; LIL’ WAVE 18 FINANCIAL, INC., a
Nevada Corporation, doing business as SUPERIOR LOAN

19 SERVICING; LEXINGTON; SPIROS CHENG,

an individual RICHARD BARNES, an 20 individual; KATHERINE HEFTMAN, an 21
individual; SILICON PRIVATE CAPITAL, LLC; BETHANI DIOLI, an individual, All 22
Persons Unknown, Claiming Any Right, Title, Estate, Lien or Interest in the Property, or Any 23
Cloud on Title Thereto, 24 Defendants. 25 _____

26 SILICON PRIVATE CAPITAL, LLC,

27 Cross-Complainant, 1 v. 2 FUNDING RUSH, INC., a California Corporation; LEXINGTON;
RYAN C. JONES; 3 LIL’ WAVE FINANCIAL, INC., a Nevada Corporation, doing business as
SUPERIOR 4 LOAN SERVICING; All Persons Unknown, Claiming Any Right, Title, Estate,
Lien or 5 Interest in the Property, or Any Cloud on Title 6 Thereto, 7 Cross-Defendants. 8 9 10 On
March 30, 2025, after obtaining leave of Court, Defendants Katherine Heftman and 11 Richard
Barnes (hereinafter “Crossclaim Plaintiffs”) filed an amended answer that contained 12
crossclaims against multiple parties, including, but not limited to, Onpoint Appraisal Services, 13
Inc. and Ryan C. Jones (hereinafter “Crossclaim Defendants”). (Doc. No. 124). On August 26, 14
2025, Crossclaim Plaintiffs and Crossclaim Defendants “stipulate[d] under Federal Rule of Civil
15 Procedure 41(a)(1)(A)(ii) that the third party complaint be dismissed without prejudice as to all

16 claims, causes of action, and to these parties, with each party bearing that party's own attorney's 17 fees and costs." (Doc. No. 132). The filing is signed by counsel for Crossclaim Plaintiffs and 18 Crossclaim Defendants only. (Id. at 2-3). 19 Here, the parties intend to dismiss the claims between them, but the filing does not comply 20 with the applicable procedural rule and thus is invalid. Specifically, Federal Rule of Civil

21 Procedure 41(a)(1)(A)(ii) requires that a stipulation of dismissal be signed "by all parties who 22 have appeared," not just by the parties who are impacted by the stipulation. "As the express 23 language of this rule indicates, for a dismissal under Rule 41(a)(1)(ii) to be effective, all parties 24 who have appeared must sign the stipulation." *Aswad v. ACA Receivables, L.L.C.*, No. CIV F 25 06-0835 AWI LJO, 2007 WL 427591, at *1 (E.D. Cal. Feb. 7, 2007) (emphasis added); see 26 also *Thacker v. AT&T Corp.*, No. 2:20-cv-00255 KJM CKD (PS), 2021 WL 1784873, at *1 (E.D. 27 Cal. May 5, 2021), report and recommendation adopted, No. 2:20-cv-0255 KJM CKD (PS), 2021 1 Holdings, L.P., 82 F.4th 1031, 1034 (11th Cir. 2023) (analyzing whether Rule 41(a)(1)(A)(ii) 2 dismissal in a multi-defendant/party requires signatures by all parties who have appeared or 3 signatures of only those parties involved and holding Rule requires signature of all parties who 4 have appeared and finding previous dismissals ineffective). 5 Additionally, the Court notes that dismissal of the claims between Crossclaim Plaintiffs 6 and Crossclaim Defendants will not end any parties' involvement in this action. At a minimum, 7 Plaintiffs' claims against Crossclaim Plaintiffs remain and Crossclaim Defendants are named as 8 defendants in Defendant Silicon Private Capital's Second Amended Crossclaim filed August 8, 9 2025. (See Doc. Nos. 21, 130). Thus, a dismissal of the claims between Crossclaim Plaintiffs 10 and Crossclaim Defendants will not amount to a dismissal of all claims asserted by Crossclaim 11 Plaintiffs in their crossclaim given additional parties are named as crossclaim defendants. (See 12 Doc. No. 124 at 18-27). And Rule 41(a) applies only to the dismissal of an entire action—not to 13 particular claims. *Bailey v. Shell W. E&P, Inc.*, 609 F.3d 710, 720 (9th Cir. 2010); see also *In re 14 Esteva*, 60 F.4th 664, 675 (11th Cir. 2023) (collecting cases). 15 In contrast, Rule 41(c) allows a counterclaimant to voluntarily dismiss "any 16 counterclaim, crossclaim, or third-party claim" pursuant to Rule 41(a) (1)(A)(i)." *Edge Sys. LLC 17 v. Ageless Serums LLC*, No. 2:20-cv-09669-FLA (PVCX), 2022 WL 22877064, at *2 (C.D. Cal.

18 Apr. 15, 2022). Specifically, Rule 41(c) provides that the "rule applies to a dismissal of any 19 counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 20 41(a)(1)(A)(i) must be made: (1) before a responsive pleading is served; or (2) if there is no 21 responsive pleading, before evidence is introduced at a hearing or trial." *Dep't of Educ., Hawai'i 22 v. C.B. ex rel. Donna B.*, No. CIV. 11-00576 SOM, 2012 WL 1081073, at *3 (D. Haw. Mar. 29, 23 2012). 24 Alternatively, a party may also dismiss an action by filing a motion requesting the Court 25 to dismiss the action. Fed. R. Civ. P. 41(a)(2). A motion brought under this Rule is addressed to 26 the sound discretion of the district court. *Hamilton v. Firestone Tire & Rubber Co. Inc.*, 679 F.2d 27 143, 145 (9th Cir. 1982). 1 Accordingly, it is ORDERED: 2 1. The parties'

stipulation of dismissal (Doc. No. 132) is DISREGARDED. 3 2. The Crossclaim Defendants may elect to refile a notice or motion that complies with

4 Rule 41. Any such notice or motion should specifically identify, with citations to the

5 relevant docket number, the specific claims and parties impacted. 6 Dated: _ September 9, 2025

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8 HELENA M. BARCH-KUCHTA

9 UNITED STATES MAGISTRATE JUDGE

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