

Exhibit A

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1 **AMERICA FIRST LEGAL FOUNDATION**

2 James K. Rogers (No. 027287)
3 *Senior Counsel*
4 611 Pennsylvania Ave., SE #231
5 Washington, D.C. 20003
6 Phone: (202) 964-3721
7 James.Rogers@aflegal.org

8 *Attorneys for Plaintiffs*

JENNIFER WRIGHT ESQ., PLC

Jennifer J. Wright (027145)
4350 E. Indian School Rd
Suite #21-105
Phoenix, Arizona 85018
jen@jenwesq.com

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STRONG COMMUNITIES
12 FOUNDATION OF ARIZONA
13 INCORPORATED, ERIC LOVELIS, and
14 WILLIAM JOSEPH APPLETON;

15 Plaintiffs,

16 v.

17 MARICOPA COUNTY; BILL GATES,
18 STEVE GALLARDO, THOMAS
19 GALVIN, CLINT HICKMAN, and
20 JACK SELLERS, in their respective
21 official capacities as members of the
22 Maricopa County Board of Supervisors;
23 and STEPHEN RICHER, in his official
24 capacity as Maricopa County Recorder;
25 COCONINO COUNTY; JERONIMO
26 VASQUEZ, PATRICE HORSTMAN;
27 ADAM HESS, JUDY BEGAY, and
28 LENA FOWLER, in their respective
official capacities as members of the
Coconino County Board of Supervisors;
and PATTY HANSEN, in her official
capacity as Coconino County Recorder;

Defendants.

Case No. CV2024-002441

**PLAINTIFFS' REPLY IN SUPPORT
OF THEIR NOTICE OF DISMISSAL**

(Assigned to the Hon. Jay Adleman)

1 The Maricopa Defendants continue to advocate for an idiosyncratic interpretation
2 of Rule 41 that no Arizona court has ever endorsed. Not stymied by the complete lack of
3 textual or precedential support for their position, they instead attempt to extract their
4 desired meaning from the penumbras and emanations of minor stylistic amendments made
5 in 2016. However, their attempt fails for four reasons:

6 *First*, the Prefatory Comment to the 2016 Amendments directly contradicts the
7 Defendants' exegetical approach. That comment specifically explains that, for rules
8 changed by the 2016 amendments, "[t]he intent of these differences is to make the ARCP
9 more functional, and easier to understand and use." *In the Matter of ARIZONA RULES OF*
10 *CIVIL PROCEDURE (ALL)*, Ariz. Sup. Ct. Order R-16-0010 at 1 (Sept. 2, 2016), available
11 at <http://tinyurl.com/35m328cp>. Thus, the Supreme Court instructed, "[p]rior case law
12 continues to be authoritative, unless it would be inappropriate because of a new
13 requirement or provision in these amended rules." *Id.* (emphasis added). Therefore, the
14 Maricopa Defendants were wrong to insist that caselaw predating the 2016 amendments
15 no longer applies.

16 *Second*, their argument fails on textual grounds. The rule itself states that a dismissal
17 under Rule 41(a)(1) is "By the Plaintiff." The phrase "without order of the court" was
18 removed because it is redundant—the rule provides two methods through which an action
19 is dismissed "[b]y the [p]laintiff": through notice or stipulated order. The Rule lists no other
20 method. Therefore, the phrase "without order of the court" is redundant because, in context,
21 it is clear that the notice or stipulated order effectuates the dismissal. For decades before
22 2016, this is how Rule 41 dismissals happened in this State, and following the 2016
23 amendments, it is *still* how they happen.

24 Further support for this interpretation comes from Rule 41(a)(2), which states
25 explicitly that, after an answer or motion for summary judgment has been filed, "an action
26 may be dismissed at the plaintiff's request only by court order, *on terms that the court*

1 *considers proper.*” Ariz. R. Civ. P. 41(a)(2). The Supreme Court included this specific
2 phrase in Rule 41(a)(2) but not in Rule 41(a)(1). To quote the Maricopa Defendants, this
3 difference “must mean something.” (Maricopa Defendants’ Reply in Support of Their
4 Motion for Leave at 2.)

5 And indeed, it does mean something. As the Supreme Court has explained, where
6 the drafter “has specifically included a term in some places within a statute and excluded
7 it in other places, courts will not read that term into the sections from which it was
8 excluded,” *Am. C.L. Union of Arizona v. Arizona Dep’t of Child Safety*, 251 Ariz. 458, 463
9 ¶ 20 (2021) (cleaned up). This interpretive rule, also known as the *expressio unius* canon
10 of construction, applies as equally to the interpretation of the Rules of Civil Procedure as
11 it does to statutory interpretation. *Rash v. Town of Mammoth*, 233 Ariz. 577, 581 ¶ 6 (App.
12 2013) (applying *expressio unius* canon of construction to court rules).

13 Applying *expressio unius* to Rule 41, the inclusion of the phrase “on terms that the
14 court considers proper” in Rule 41(a)(2), and the absence of any similar phrase in Rule
15 41(a)(1), means that it should not be read into Rule 41(a)(1). This means that courts lack
16 the discretion to impose conditions on Rule 41(a)(1) dismissals.

17 *Third*, the relevant caselaw that *post*-dates the 2016 amendments contradicts the
18 Maricopa Defendants’ unique interpretation of the rule. When confronted with a citation
19 to one such case, how do they respond? By talismanically shouting “dicta!”

20 The Maricopa Defendants’ claim of dicta, however, falls flat because the Court of
21 Appeals’ analysis in *Olewin v. Nobel Mfg., LLC*, was directly relevant to the court’s
22 reasoning in the case, which required it to interpret the meaning of Rule 41(a) in the context
23 of the two-dismissal rule. 254 Ariz. 346, 353 ¶ 25 (App. 2023). The two-dismissal rule of
24 Rule 41(a)(1)(B) states that a plaintiff’s first voluntary dismissal under Rule 41(a) is
25 without prejudice, but that “if the plaintiff previously dismissed an action in any court
26 based on or including the same claim, a notice of dismissal operates as an adjudication on

1 the merits.” At issue in *Olewin* was whether “a case that would have been barred by
2 application of [the two-dismissal rule of] Rule 41(a) renders a default judgment void under
3 Rule 60(b)(4).” 254 Ariz. at 352 ¶ 23.

4 In *Olewin*, the Plaintiff had filed actions in Arizona, New York, and Michigan. The
5 action in New York was dismissed through a “stipulation of discontinuance,” and the action
6 in Michigan through a “notice of voluntary dismissal.” *Olewin*, 254 Ariz. at 354 ¶¶ 30-31.
7 The superior court in Arizona had dismissed the Arizona action for lack of prosecution,
8 and the plaintiff moved to reopen the case and obtained a default judgment. *Id.* at 348 ¶ 1.
9 If both the New York and Michigan dismissals had qualified as Rule 41(a)(1)(A)
10 dismissals, then, the defendant argued, the Arizona default judgment against it was void
11 under the two-dismissal rule. Therefore, at issue in *Olewin* was whether the dismissals in
12 Michigan and New York qualified as actions “the plaintiff previously dismissed ... in any
13 court based on or including the same claim.” Ariz. R. Civ. P. 41(a)(1)(B).

14 This determination required the Court of Appeals to decide whether the New York
15 and Michigan dismissals were equivalent to a Rule 41(a)(1)(A) dismissal in Arizona. *Id.* at
16 354 ¶ 28 and n.3 (“By adopting Rule 41(a), our supreme court established specific criteria
17 for deciding whether prior dismissals from any court qualify as a case previously dismissed
18 by the plaintiff. *Thus, we examine the legal effect of each dismissal in this case under the*
19 *rule’s plain language.*” (emphasis added)).

20 In analyzing the New York dismissal, *Olewin* explained that Rule 41(a)(1)(A)
21 “describes *two ways* in which a ‘plaintiff may dismiss an action’: (1) filing a timely notice
22 of dismissal or (2) obtaining a court order based on a stipulation. The New York order does
23 not fit under either category. It is not a notice of dismissal nor does the record reveal any
24 court order.” *Olewin*, 254 Ariz. at 354 ¶ 30 (quoting Ariz. R. Civ. P. 41(a)(1)(A)) (emphasis
25 added). Contrary to the Maricopa Defendants’ interpretation of Rule 41, this holding of
26 *Olewin* states there are only *two* ways for a voluntary Rule 41(a)(1)(A) dismissal: by notice

1 or stipulated order, and not through a discretionary order by the court imposing additional
2 conditions.

3 Ultimately, *Olewin* held that the Michigan dismissal *did* qualify as a voluntary
4 dismissal under Rule 41(a)(1)(A), and that, therefore, “the Michigan dismissal was the first
5 and only case dismissed by *Olewin* in this litigation; therefore, the superior court erred in
6 granting Nobel's Rule 60(b) motion.” *Olewin*, 254 Ariz. at 354 ¶ 31.

7 The meaning of Rule 41(a)(1)(A) went to the very heart of the *Olewin* court’s
8 reasoning and analysis, and it was essential to its holding. *Olewin*’s holding about Rule 41
9 is not dicta: “Rule 41(a)(1) allows a plaintiff to voluntarily dismiss an action as a matter of
10 right and without a court order before the defendant serves an answer or motion for
11 summary judgment. *The first time, the dismissal is without prejudice.*” *Olewin*, 254 Ariz.
12 at 353 ¶25 (emphasis added).

13 Furthermore, *Olewin* was not a one-off. Every other post-2016 Court of Appeals
14 case to construe the meaning of Rule 41(a)(1) has interpreted it the same way.

15 Most recently, the Court of Appeals held in August of 2023 that “a notice of
16 dismissal under Rule 41(a)(1)(A)(i), Ariz. R. Civ. P., is self-executing and ‘completely
17 effective upon the filing of a written notice of dismissal.’” *Evans v. Reyes*, No. 2 CA-CV
18 2022-0144, 2023 WL 5354416, at *3 ¶ 13 (Ariz. Ct. App. Aug. 21, 2023) (quoting *Spring*
19 *v. Spring*, 3 Ariz. App. 381, 383 (1966). In September 2021, the Court of Appeals explained
20 that “plaintiffs may voluntarily dismiss an action so long as they do so ‘before the opposing
21 party serves either an answer or a motion for summary judgment.’” *Saad v. Shinohara*, No.
22 1 CA-CV 21-0196, 2021 WL 4478693, at *3 ¶ 7 (Ariz. Ct. App. Sept. 30, 2021) (quoting
23 Ariz. R. Civ. P. 41(a)(1)(A)(i)). Similarly, in 2018 the Court of Appeals held that the
24 equivalent Rule of Family Law Procedure “allows a petitioner to voluntarily dismiss a
25 petition ‘without order of court by filing a notice of dismissal at any time before filing of a
26 response.’ This dismissal is ‘absolute, self-executing, and accomplished automatically by

1 plaintiff's filing a notice of dismissal.” *State ex rel. Dep't of Econ. Sec. v. Martinez*, No. 1
2 CA-CV 17-0247 FC, 2018 WL 4164323, at *2 ¶ 9 (Ariz. Ct. App. Aug. 30, 2018)/

3 Thus, the final tally is: one published opinion that is binding authority and three
4 unpublished opinions that are persuasive authority that all support the Plaintiffs' reading
5 of Rule 41.

6 The Maricopa Defendants have not been able to muster even *one single* case
7 citation—published or not—in support of their interpretation of Rule 41(a)(1). If this Court
8 were to adopt the Maricopa Defendants' interpretation, it would be the first court in
9 Arizona to interpret Rule 41 in this way, and it would be doing directly contrary to
10 controlling Court of Appeals precedent.

11 *Fourth*, the federal cases considering the equivalent federal rule universally adopt
12 the interpretation advocated by the Plaintiffs. “Because Arizona has substantially adopted
13 the Federal Rules of Civil Procedure, [Arizona courts] give great weight to the federal
14 interpretations of the rules.” *Anserv Ins. Servs., Inc. v. Albrecht In & For Cnty. of*
15 *Maricopa*, 192 Ariz. 48, 49 ¶ 5 (1998) (quoting *Edwards v. Young*, 107 Ariz. 283, 284
16 (1971)); *see also Olewin*, 254 Ariz. at 353 ¶ 26 (citing federal case when construing
17 meaning of Rule 41); *Laurence v. Salt River Project Agric. Improvement & Power Dist.*,
18 255 Ariz. 95, 528 P.3d 139, 146 ¶ 24 (2023) (citing U.S. Supreme Court case interpreting
19 Rule 41(b), “which is identical to Arizona’s version”).

20 Even a cursory WestLaw KeyCite search of Fed. R. Civ. P. 41 turns up scores of
21 federal cases supporting the Plaintiffs' interpretation of Rule 41 and *none* supporting the
22 Maricopa Defendants' proffered interpretation.

23 There are a multitude of Ninth Circuit cases on point. *E.g.*, *United States v. Real*
24 *Prop. Located at 475 Martin Lane, Beverly Hills, CA*, 545 F.3d 1134, 1146 (9th Cir. 2008)
25 (noting the “special, self-executing effect of a Rule 41 voluntary dismissal”); *Com. Space*
26 *Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (“It is well settled that under

1 Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to
2 service by the defendant of an answer or a motion for summary judgment.” (cleaned up)).

3 For example, the Ninth Circuit has explained that Rule 41 “grants plaintiffs the
4 *absolute right* to dismiss an action without prejudice provided that the defendant has not
5 yet filed an answer or a motion for summary judgment.” *Duke Energy Trading & Mktg.,*
6 *L.L.C. v. Davis*, 267 F.3d 1042, 1048 (9th Cir. 2001) (emphasis added).

7 “The filing of a Rule 41(a)(1)(i) notice itself closes the file. There is nothing the
8 defendant can do to fan the ashes of that action into life and the court has no role to play.
9 This is a matter of right running to the plaintiff and *may not be extinguished or*
10 *circumscribed by adversary or court. There is not even a perfunctory order of court closing*
11 *the file.* Its alpha and omega was the doing of the plaintiff alone.” *Id.* at 1049 (cleaned up)
12 (emphasis added). “The effect of the filing of a notice of dismissal pursuant to Rule
13 41(a)(1)(i) is to leave the parties as though no action had been brought. *Once the notice of*
14 *dismissal has been filed, the district court loses jurisdiction* over the dismissed claims and
15 may not address the merits of such claims or issue further orders pertaining to them.” *Id.*
16 (cleaned up) (emphasis added).

17 *Every other circuit agrees.*¹

18
19 ¹ This footnote provides citation to 24 cases as a *small* selection of the relevant case law.
20 There are many more cases that say the same thing:

- 21 • *Moses v. City of Perry, Michigan*, 90 F.4th 501, 504 n.1 (6th Cir. 2024) (referring to
22 stipulated order of dismissal signed by all parties to the case, but not by proposed
23 intervenors and explaining that “[t]he district court’s separate order was unnecessary to
24 dismiss the case. Rule 41(a)(1)(A)(ii) orders, generally speaking, are self-executing and
25 do not require judicial approval.” (cleaned up));
- 26 • *Smith v. Williams*, 67 F.4th 1139, 1140–41 (11th Cir. 2023) (vacating district court’s
denial of plaintiff’s Rule 41 notice of voluntary dismissal because “[a] notice of
dismissal is effective immediately upon filing, and the district court is immediately
deprived of jurisdiction over the merits of the case.” (cleaned up))
- *Royal Palm Vill. Residents, Inc. v. Slider*, 57 F.4th 960, 963 (11th Cir. 2023) (noting
that the plaintiffs “filed a notice of voluntary dismissal without prejudice” and that
“[b]ecause the [defendants] hadn’t yet answered, the [plaintiffs’] voluntary dismissal
was self-executing”)

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- *Padilla v. Smith*, 53 F.4th 1303, 1309 (11th Cir. 2022) (explaining that “[a] stipulation filed pursuant to [Fed. R. Civ. P. 41(a)(1)(A)(ii)] is self-executing and dismisses the action upon becoming effective—a district court may not act after the stipulation becomes effective because the stipulation, once effective, divests the district court of jurisdiction.”)
 - *Noga v. Fulton Fin. Corp. Emp. Benefit Plan*, 19 F.4th 264, 270 (3d Cir. 2021) (“Dismissals under Rule 41(a) may be effectuated by stipulation or by notice, and a proper dismissal using either method is self-executing.”)
 - *Est. of W. v. Smith*, 9 F.4th 1361, 1367 (11th Cir. 2021) (“a dismissal under [Rule 41] is effective immediately: The plain language of Rule 41(a)(1)(A)(ii) requires that a stipulation filed pursuant to that subsection is self-executing and dismisses the case upon its becoming effective. The stipulation becomes effective upon filing unless it explicitly conditions its effectiveness on a subsequent occurrence. District courts need not and may not take action after the stipulation becomes effective because the stipulation dismisses the case and divests the district court of jurisdiction.” (cleaned up))
 - *United States v. UCB, Inc.*, 970 F.3d 835, 849 (7th Cir. 2020) (“Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that the plaintiff may dismiss an action by serving a notice of dismissal any time before the opposing party serves either an answer or a motion for summary judgment. Dismissal is without prejudice unless the notice states otherwise. This right is absolute. One doesn’t need a good reason, or even a sane or any reason to serve notice under the Rule, and the notice is self-executing and case-terminating. In other words, once a valid Rule 41(a) notice has been served, the case is gone; no action remains for the district judge to take, and her further orders are void.” (cleaned up))
 - *Takeda Pharms. U.S.A., Inc. v. Mylan Pharms. Inc.*, 967 F.3d 1339, 1349 n.5 (Fed. Cir. 2020) (“a self-executing, voluntary dismissal [under Rule 41(a)(1)(A)] ... does not resolve any issue on the merits”)
 - *In re Odyssey Contracting Corp.*, 944 F.3d 483, 487 (3d Cir. 2019) (noting that, if the parties had “stipulated to dismissal under Federal Rule of Civil Procedure 41,” it “would have required the Bankruptcy Court to take no further action to dismiss the matter.”)
 - *Adams v. USAA Cas. Ins. Co.*, 863 F.3d 1069, 1078, 1080–81 (8th Cir. 2017) (explaining that a Rule 41(a)(1) dismissal “is effective automatically and does not require judicial approval” and holding that “Rule 41(a)(1) cases require no judicial approval or review as a prerequisite to dismissal; in fact, the dismissal is effective upon filing, with no court action required. The reason for the dismissal is irrelevant under Rule 41(a)(1). Therefore, we hold that the district court erred in concluding that counsel engaged in sanctionable conduct by stipulating to a dismissal under Rule 41(a)(1) for the purpose of forum shopping and avoiding an adverse result.” (cleaned up))
 - *In re Brewer*, 863 F.3d 861, 864 (D.C. Cir. 2017) (Rule 41 “allows the parties voluntarily to dismiss a suit without a court order by filing a jointly signed stipulation with the court”)
 - *State Nat’l Ins. Co. v. Cnty. of Camden*, 824 F.3d 399, 406–07 (3d Cir. 2016) (“Every court to have considered the nature of a voluntary stipulation of dismissal under Rule 41(a)(1)(A)(ii) has come to the conclusion that it is immediately self-executing. No separate entry or order is required to effectuate the dismissal. Once the voluntary stipulation is filed, the action on the merits is at an end. Any action by the district court after the filing of the Stipulation of Dismissal can have no force or effect because the matter has already been dismissed. A voluntary dismissal deprives the District Court of jurisdiction over the action.” (cleaned up))

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- *Bechuck v. Home Depot U.S.A., Inc.*, 814 F.3d 287, 291 (5th Cir. 2016) (“The notice of dismissal is self-effectuating and terminates the case in and of itself; no order or other action of the district court is required. Indeed, Rule 41(a)(1) is the shortest and surest route to abort a complaint when it is applicable. So long as plaintiff has not been served with his adversary’s answer or motion for summary judgment he need do no more than file a notice of dismissal with the Clerk. That document itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. There is not even a perfunctory order of court closing the file. Its alpha and omega was the doing of the plaintiff alone. He suffers no impairment beyond his fee for filing. Thus, once a plaintiff has moved to dismiss under Rule 41(a)(1)(A)(i), the case is effectively terminated. The court ha[s] no power or discretion to deny plaintiffs’ right to dismiss or to attach any condition or burden to that right. Accordingly, the district court may not attach any conditions to the dismissal.” (cleaned up))
 - *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1277 (11th Cir. 2012) (“a notice of dismissal under Rule 41(a)(1)(A)(i) is effective immediately upon filing” (cleaned up))
 - *Garber v. Chicago Mercantile Exch.*, 570 F.3d 1361, 1365 (Fed. Cir. 2009) (“Rule 41(a)(1)(A)(i) permits dismissal by a plaintiff acting alone if a notice of the dismissal is filed before the defendant has entered either an answer or a motion for summary judgment”)
 - *In re Matthews*, 395 F.3d 477, 480–81 (4th Cir. 2005) (in civil forfeiture case in which the United States government had filed a Rule 41(a)(1)(i) “notice of voluntary dismissal before ... the only remaining adverse party, answered the ... complaint,” holding that “[a] voluntary dismissal under Rule 41(a)(1)(i) is available as a matter of unconditional right and is self-executing, i.e., it is effective at the moment the notice is filed with the clerk and no judicial approval is required. Moreover, a dismissal without prejudice operates to leave the parties as if no action had been brought at all. A voluntary dismissal thus carries down with it previous proceedings and orders in the action, and all pleadings, both of plaintiff and defendant, and all issues, with respect to plaintiff’s claim. In addition, after an action is voluntarily dismissed, the court lacks authority to conduct further proceedings on the merits. Here, the ... action was terminated when the United States filed its notice of dismissal.”)
 - *Janssen v. Harris*, 321 F.3d 998, 1000-1 (10th Cir. 2003) (“Under Rule 41(a)(1)(i), a plaintiff has an absolute right to dismiss without prejudice and no action is required on the part of the court... Other circuits are in accord.... The plain language of Rule 41(a)(1)(i), as well as the strict construction courts have given the rule, mandate the result we reach here.”)
 - *Finley Lines Joint Protective Bd. Unit 200, Bhd. Ry. Carmen, a Div. of Transp. Commc'ns Union v. Norfolk S. Corp.*, 109 F.3d 993, 995 (4th Cir. 1997) (when filing a Rule 41(a)(1) notice of dismissal, “a plaintiff need not secure court approval to dismiss his case without prejudice if he acts before the defendant serves an answer or motion for summary judgment. This dismissal is available as a matter of unconditional right and is self executing, i.e., it is effective at the moment the notice is filed with the clerk and no judicial approval is required.” (cleaned up))
 - *Marex Titanic, Inc. v. Wrecked & Abandoned Vessel*, 2 F.3d 544, 546 (4th Cir. 1993) (holding that district court did not have discretion to plaintiff’s notice of voluntary dismissal and explaining that “[i]f the plaintiff files a notice of dismissal before the adverse party serves it with an answer or a motion for summary judgment, the dismissal is available as a matter of unconditional right, and is self-executing, i.e., it is effective

1 Because the Maricopa Defendants persist in their legally fallacious attacks, the
2 Plaintiffs renew their request for fees and costs.

3 The Maricopa Defendants' stubborn and quixotic quest is doomed to failure. The
4 relief they seek is simply not available to them. As of 12:44 p.m. on Thursday, February
5 22, 2024, this case has been dismissed without prejudice, and it is "as though no action had
6 been brought."

7 The fact of dismissal is established by the plain text of the rule, fifty-six years of
8 Arizona case law, and the universal agreement of federal courts interpreting the equivalent
9 federal rule. Relying on this great weight of authority establishing that this action has

10 at the moment the notice is filed with the clerk and no judicial approval is required."
11 (cleaned up))

- 12 • *In re Wolf*, 842 F.2d 464, 466 (D.C. Cir. 1988) (vacating district court order dismissing
13 case with prejudice where the parties had entered into a Rule 41(a)(1)(ii) stipulation to
14 dismiss without prejudice because "caselaw concerning stipulated dismissals under
15 Rule 41(a)(1)(ii) is clear that the entry of such a stipulation of dismissal is effective
16 automatically and does not require judicial approval. Here, the district court judge
17 deprived the parties of their unconditional right to a Rule 41(a)(1)(ii) dismissal by
18 stipulation. By altering the stipulation and causing the dismissal to be with prejudice,
19 the district court judge has imposed legal prejudice on plaintiffs. Imposition of such a
20 condition [dismissal with prejudice] directly conflicts with the clear and unambiguous
21 language of Rule 41(a)(1) which contains no exceptions that call for the exercise of
22 judicial discretion by any court." (cleaned up))
- 23 • *Randall v. Merrill Lynch*, 820 F.2d 1317, 1320 (D.C. Cir. 1987) ("Rule 41(a)(1)(i) of
24 the Federal Rules of Civil Procedure provides a simple, self-executing mechanism
25 whereby a case may be dismissed in certain circumstances without motion, argument,
26 or judicial order. When the plaintiff files a notice of dismissal before service by the
adverse party of an answer or of a motion for summary judgment, the dismissal takes
effect automatically: the trial judge has no role to play at all.")
- *Foss v. Fed. Intermediate Credit Bank of St. Paul*, 808 F.2d 657, 659-60 (8th Cir. 1986)
(reversing district court's dismissal with prejudice of action after plaintiff had filed Rule
41(a)(1)(i) notice of voluntary dismissal without prejudice and explaining that "[t]he
rule does not require a plaintiff to bring a motion in order to voluntarily dismiss an
action. Rather, the rule was intended to be executed by simply filing notice with the
court.... Both this Court and other courts have recognized that Rule 41(a)(1)(i) must not
be stretched beyond its literal terms if it is to serve its intended purpose.")
- *Universidad Cent. Del Caribe, Inc. v. Liaison Comm. on Med. Educ.*, 760 F.2d 14, 15
(1st Cir. 1985) (holding that district court did not have "discretion to convert a plaintiff's
notice of voluntary dismissal without prejudice under Fed.R.Civ.P. 41(a)(1) into a
dismissal with prejudice under Rule 41(a)(2). Rule 41(a)(1)(i) allows a plaintiff
voluntarily to dismiss a case by filing a notice of dismissal at any time before service
by the adverse party of an answer or of a motion for summary judgment, whichever
first occurs.")
- *Thorpe v. Scarne*, 599 F.2d 1169, 1171 n.1 (2d Cir. 1979) ("The law is settled that the
filing of a notice of dismissal under Rule 41(a)(1)(i) automatically terminates the
lawsuit. No action by the court is necessary to effectuate the dismissal.")

1 already been dismissed, the Plaintiffs filed on Friday, February 23, 2024, a new action in
2 Yavapai County Superior Court against the parties who were Defendants in this action, as
3 well as Yavapai County, the members of the Yavapai County Board of Supervisors, and
4 the Yavapai County Recorder. *Strong Communities Foundation et al. v. Yavapai County*
5 *et al.*, Case No. S1300CV202400175 (Yavapai Cnty Sup. Ct. Feb. 23, 2023).

6 The Plaintiffs request that this Court issue an order clarifying that Rule 41 says what
7 it means: this case was dismissed without prejudice when the Plaintiffs filed their notice of
8 dismissal on February 22. And thus, the parties will finally be able to move on to litigating
9 this case on the merits, rather than additional procedural squabbling.

10 RESPECTFULLY SUBMITTED this 26th of February, 2024.

11 **America First Legal Foundation**

12
13 By: /s/ James K. Rogers

14 James K. Rogers (No. 027287)

15 *Senior Counsel*

16 America First Legal Foundation

17 611 Pennsylvania Ave., SE #231

18 Washington, D.C. 20003

19 Phone: (202) 964-3721

20 James.Rogers@aflegal.org

21 **Jennifer Wright Esq., Plc**

22 By: /s/Jennifer J. Wright (with permission)

23 Jennifer J. Wright (027145)

24 4350 E. Indian School Rd

25 Suite #21-105

26 Phoenix, Arizona 85018

jen@jenwesq.com

Attorneys for Plaintiffs

1 ORIGINAL filed and served via electronic
2 means this 26th day of February, 2024, upon:

3 Honorable Jay R. Adleman
4 Maricopa County Superior Court
5 c/o Michelle Stergulz
6 michelle.stergulz@jbazmc.maricopa.gov

7 Joseph La Rue
8 Thomas Liddy
9 Jack O'Connor
10 Rosa Aguilar
11 aguilarr@mcao.maricopa.gov
12 Maricopa County Attorney's Office
13 225 W Madison St
14 Phoenix, Arizona 85003
15 laruej@mcao.maricopa.gov
16 liddyt@mcao.maricopa.gov
17 oconnorj@mcao.maricopa.gov

18 Brett W. Johnson (Bar No. 021527)
19 Eric H. Spencer (Bar No. 022707)
20 Colin P. Ahler (Bar No. 023879)
21 Ian Joyce (Bar No. 035806)
22 One East Washington Street
23 Suite 2700
24 Phoenix, Arizona 85004-2556
25 Telephone: 602.382.6000
26 bwjohnson@swlaw.com
espencher@swlaw.com
cahler@swlaw.com
ijoyce@swlaw.com
Attorneys for Maricopa County Defendants

27 Rose Winkeler
28 Flagstaff Law Group
29 702 N. Beaver Street
30 Flagstaff, Arizona 86001
31 (928) 233-6800
32 rose@flaglawgroup.com
33 *Attorney for Coconino County Defendants*

1 D. Andrew Gaona (028414)
Austin C. Yost (034602)
2 Coppersmith Brockelman PLC
2800 North Central Avenue, Suite 1900
3 Phoenix, Arizona 85004
4 T: (602) 381-5486
agaona@cblawyers.com
5 ayost@cblawyers.com

6 Lalitha D. Madduri
7 Daniel J. Cohen
8 Elena Rodriguez Armenta
Elias Law Group LLP
9 250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
10 T: (202) 968-4330
lmadduri@elias.law
11 dcohen@elias.law
12 erodriguezarmenta@elias.law

13 Jonathan P. Hawley
14 Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
15 Seattle, Washington 98101
16 T: (206) 656-0179
jhawley@elias.law

17
18 *Attorneys for Proposed Intervenor-Defendants*
19 *Arizona Alliance for Retired Americans and*
Voto Latino

20 By: /s/ James Rogers
21
22
23
24
25
26