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ase 1:06-cv-00424-AWI-TAG Document 12 Filed 04/28/2006 Page 1 of 2 1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF CALIFORNIA 3 4 ANITA MARTINEZ, CASE NO. 1:06-cv-0424 AWI TAG 5 Plaintiff, ORDER DISMISSING CASE WITHOUT 6 PREJUDICE AND VACATING INITIAL v. SCHEDULING CONFERENCE 7 GREYHOUND LINES, INC., and DOES 1-25, inclusive, 8 Defendants. 9 10 11 The parties in this matter have stipulated to dismiss the above-captioned action without 12 prejudice (Doc. 10). The parties seek dismissal of this action pursuant to Rule 41(a) of the Federal 13 Rules of Civil Procedure. Rule 41(a)(1), in relevant part, reads: 14 an action may be dismissed by the plaintiff without order of court (i) by filing a notice 15 of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the 16 dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any 17 state an action based on or including the same claim. 18 Although a stipulation for dismissal has been filed, Rule 41(a)(1)(i) allows a plaintiff to 19 dismiss an action voluntarily, by notice, prior to service of an answer or a motion for summary 20 judgment. This rule extends as fully to cases removed from a state court, as here, as it does to cases 21 commenced in a federal court. E.g., Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). 22 Rule 41(a)(1)(i) appears applicable in this matter insofar as there is no indication in the record of an 23

answer or motion for summary judgment having been filed, whether in state or federal court.

After service of an answer, and pursuant to Rule 41(a)(1)(ii), dismissal may be effected via the filing a written stipulation to dismiss signed by all of the parties who have appeared, although an oral stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Assoc., 884 F.2d

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