

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

KINGSBURG APPLE PACKERS, INC.,
dba KINGSBURG ORCHARDS, a
California corporation, et al.,

Plaintiffs,

v.

BALLANTYNE PRODUCE CO., INC.,
a California corporation, et al.,

Defendants.

DiBUDUO LAND MANAGEMENT, a
California corporation,

Intervenor,

v.

BALLANTINE PRODUCE CO., INC., a
California corporation,

Defendant.

No. 1:09-cv-00901 AWI JLT

ORDER CLOSING THE
INTERVENOR ACTION IN THIS
CASE DUE TO VOLUNTARY
DISMISSAL BY INTERVENOR
PLAINTIFF WITHOUT
PREJUDICE

On August 8, 2012, Intervenor Plaintiff DiBUDUO LAND MANAGEMENT, a California corporation, filed a request for dismissal of its Complaint In Intervention for Damages and to Impose PACA Trust and Demand for Jury Trial without prejudice. This notice is made pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

In Wilson v. City of San Jose, the Ninth Circuit explained:

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary

1 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
2 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
3 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
4 dismissal prior to the defendant's service of an answer or motion for summary
5 judgment. The dismissal is effective on filing and no court order is required. Id.
6 The plaintiff may dismiss some or all of the defendants, or some or all of his
7 claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-
8 10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court
9 automatically terminates the action as to the defendants who are the subjects of
10 the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is
11 ordinarily without prejudice to the plaintiff's right to commence another action for
12 the same cause against the same defendants. Id. (citing McKenzie v. Davenport-
13 Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal
14 leaves the parties as though no action had been brought. Id.

15 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997).

16 No answers to Intervenor Plaintiff's complaint and no motions for summary judgment
17 have been filed in this case and it appears that no such answers or summary judgment motions
18 have been served. Because Intervenor Plaintiff has exercised its right to voluntarily dismiss the
19 complaint under Rule 41(a)(1), the Intervenor action in this case has terminated. See Wilson,
20 111 F.3d at 692.

21 Therefore, IT IS HEREBY ORDERED that the Clerk is ordered to close the Intervenor
22 action ONLY in this case in light of Intervenor Plaintiff's Rule 41(a)(1)(i) requested dismissal
23 without prejudice.

24 IT IS SO ORDERED.

25 Dated: August 10, 2012

26 
27 CHIEF UNITED STATES DISTRICT JUDGE
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