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5 **IN THE UNITED STATES DISTRICT COURT FOR THE**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 SPECTRUM SCAN, LLC,) NO. 1:09-CV-02256-AWI-JLT
9)
10 Plaintiff,) ORDER DISMISSING
11 v.) DEFENDANT AGM
12 AGM CALIFORNIA, et al.,) CALIFORNIA ONLY IN LIGHT
13) OF STIPULATION OF
14) DISMISSAL
15 Defendants.)
16 _____)

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18 On April 23, 2010, the Plaintiff filed a stipulation of dismissal of Defendant AGM
19 California only, with prejudice, pursuant to Rule 41(a)(1).

20 Rule 41(a)(1), in relevant part, reads:

21 an action may be dismissed by the plaintiff without order of court (i) by filing a
22 notice of dismissal at any time before service by the adverse party of an answer or
23 of a motion for summary judgment, whichever first occurs, or (ii) by filing a
24 stipulation of dismissal signed by all parties who have appeared in the action.
25 Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is
26 without prejudice, except that a notice of dismissal operates as an adjudication
27 upon the merits when filed by a plaintiff who has once dismissed in any court of
28 the United States or of any state an action based on or including the same claim.

29 Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily after service of an
30 answer by filing a written stipulation to dismiss signed by all of the parties, although an oral
31 stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d
32 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the
33 stipulation between the parties who have appeared is properly filed or made in open court, no
34 order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); Eitel, 782
35 F.2d at 1473 n.4. “Caselaw concerning stipulated dismissals under Rule 41(a) (1) (ii) is clear

1 that the entry of such a stipulation of dismissal is effective automatically and does not require
2 judicial approval.” In re Wolf, 842 F.2d 464, 466 (D.C. Cir. 1989); Gardiner v. A.H. Robins Co.,
3 747 F.2d 1180, 1189 (8th Cir. 1984); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 139
4 (2d Cir. 2004); Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1077 (9th Cir.
5 1999) cf. Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997) (addressing 41(a)(1)(i)).
6 “The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a
7 Rule 41(a)(1) notice,” and the dismissal “automatically terminates the action as to the defendants
8 who are the subjects of the notice.” Wilson, 111 F.3d at 692; Concha v. London, 62 F.3d 1493,
9 1506 (9th Cir. 1995).

10 Because Plaintiff has filed a voluntary dismissal under Rule 41(a)(1) as to only Defendant
11 AGM California, this case has terminated as to this Defendant only. See Fed. R. Civ. Pro.
12 41(a)(1)(ii); In re Wolf, 842 F.2d at 466; Gardiner, 747 F.2d at 1189; see also Gambale, 377 F.3d
13 at 139; Commercial Space Mgmt., 193 F.3d at 1077; cf. Wilson, 111 F.3d at 692.

14 Therefore, IT IS HEREBY ORDERED that AGM California is DISMISSED from this
15 case with prejudice in light of the parties’s filed and properly signed Rule 41(a)(1) voluntary
16 dismissal.

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18 IT IS SO ORDERED.

19 **Dated: April 27, 2010**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE