

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

JACO VAN MAANEN,

Plaintiff,

v.

YOUTH WITH A MISSION-BISHOP; YOUTH WITH A MISSION INTERNATIONAL, INC. d/b/a YWAM-OFFICE OF THE FOUNDERS; UNIVERSITY OF THE NATIONS, INC. d/b/a YWAM-UNIVERSITY OF THE NATIONS, and DOES 1-10,

Defendants.

1:10-CV-00493 AWI-JLT

ORDER DISMISSING DEFENDANT YOUTH WITH A MISSION-BISHOP WITH PREJUDICE IN LIGHT OF STIPULATION OF DISMISSAL

(Doc No. 150)

On January 6, 2012, Plaintiff and Youth With a Mission-Bishop filed a notice of voluntary dismissal with prejudice as to Defendant Youth With a Mission-Bishop only. See Court's Docket, Doc. No. 150. Although the notice purports to be made pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), it was not signed by each party who has appeared in this case. Rule 41(a)(1), in relevant part, reads:

an action may be dismissed by the plaintiff without order of court (i) 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, 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 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 state an action based on or including the same claim.

Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily after service of an answer by filing a written stipulation to dismiss signed by all of the parties, although an oral stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d

1 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the  
2 stipulation between the parties who have appeared is properly filed or made in open court, no  
3 order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); Eitel, 782  
4 F.2d at 1473 n.4. “The plaintiff may dismiss some or all of the defendants, or some or all of his  
5 claims, through a Rule 41(a)(1) notice,” and the dismissal “automatically terminates the action as  
6 to the defendants who are the subjects of the notice.” Wilson, 111 F.3d at 692; Concha v.  
7 London, 62 F.3d 1493, 1506 (9th Cir. 1995).

8 Although Defendants Youth With a Mission-International, Inc. and University of the  
9 Nations, Inc. did not sign the stipulation, they received notice of it and did not object. Nor did  
10 they did not object to the Court’s good faith settlement determination. See Court’s Docket, Doc.  
11 No. 148. In light of these facts, the Court finds that dismissal under Rule 41(a)(2) is appropriate.

12 Therefore, IT IS HEREBY ORDERED that Defendant Youth With a Mission-Bishop is  
13 DISMISSED from this case with prejudice in light of the parties’ Voluntary Stipulation of  
14 Dismissal.

15 IT IS SO ORDERED.

16 Dated: January 18, 2012

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18 CHIEF UNITED STATES DISTRICT JUDGE