1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 6 7 J & J SPORTS PRODUCTIONS, INC., 8 NO. 1:10-CV-01711 9 Plaintiff, ORDER DISMISSING DEFENDANTS TASHA A. v. JAMES INDIVIDUALLY, 10 TASHA A. JAMES, et al., VISALIA PIZZA FACTORY 1, 11 AND WEST COAST PIZZA Defendants. CONCEPTS, INC. IN LIGHT OF 12 STIPULATION OF DISMISSAL 13 14 On January 3, 2011, the Plaintiff filed a stipulation of dismissal of Defendants Tasha A. 15 James a/k/a Tasha A. Tayian a/k/a Tasha A. Vassilev, individually and d/ba/a Pizza Factory a/k/a 16 Visalia Pizza Factory 1, and West Coast Pizza Concepts, Inc., d/b/a Pizza Factory a/k/a Visalia 17 Pizza Factory 1, only, without prejudice, pursuant to Rule 41(a). 18 Rule 41(a)(1), in relevant part, reads: 19 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 20 of a motion for summary judgment, whichever first occurs, or (ii) by filing a 21 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 22 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 23 the United States or of any state an action based on or including the same claim. 24 Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily after service of an 25 answer by filing a written stipulation to dismiss signed by all of the parties, although an oral 26 stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d 27 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the stipulation between the parties who have appeared is properly filed or made in open court, no 28

1	order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); <u>Eitel</u> , 782
2	F.2d at 1473 n.4. "Caselaw concerning stipulated dismissals under Rule 41(a) (1) (ii) is clear
3	that the entry of such a stipulation of dismissal is effective automatically and does not require
4	judicial approval." In re Wolf, 842 F.2d 464, 466 (D.C. Cir. 1989); Gardiner v. A.H. Robins Co.,
5	747 F.2d 1180, 1189 (8th Cir. 1984); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 139
6	(2d Cir. 2004); Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1077 (9th Cir.
7	1999) <u>cf. Wilson v. City of San Jose</u> , 111 F.3d 688, 692 (9th Cir. 1997) (addressing 41(a)(1)(i)).
8	"The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a
9	Rule 41(a)(1) notice," and the dismissal "automatically terminates the action as to the defendants
10	who are the subjects of the notice." Wilson, 111 F.3d at 692; Concha v. London, 62 F.3d 1493,
11	1506 (9th Cir. 1995).
12	Because the parties have filed a voluntary dismissal under Rule 41(a)(1)(ii) as to only
13	Defendants Tasha A. James a/k/a Tasha A. Tayian a/k/a Tasha A. Vassilev, individually and
14	d/ba/a Pizza Factory a/k/a Visalia Pizza Factory 1, and West Coast Pizza Concepts, Inc., d/b/a
15	Pizza Factory a/k/a Visalia Pizza Factory 1, this case has terminated as to these Defendants only.
16	See Fed. R. Civ. Pro. 41(a)(1)(ii); <u>In re Wolf</u> , 842 F.2d at 466; <u>Gardiner</u> , 747 F.2d at 1189; <u>see</u>
17	also Gambale, 377 F.3d at 139; Commercial Space Mgmt, 193 F.3d at 1077; cf. Wilson, 111
18	F.3d at 692.
19	Therefore, IT IS HEREBY ORDERED that Defendants Tasha A. James a/k/a Tasha A.
20	Tayian a/k/a Tasha A. Vassilev, individually and d/ba/a Pizza Factory a/k/a Visalia Pizza Factory
21	1, and West Coast Pizza Concepts, Inc., d/b/a Pizza Factory a/k/a Visalia Pizza Factory 1, are
22	DISMISSED from this case without prejudice in light of the parties's filed and properly signed
23	Rule 41(a)(1) voluntary dismissal.
24	IT IS SO ORDERED.
25	Dated: January 7, 2011
26	CHIEF UNITED STATES DISTRICT JUDGE