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

<p><b>ONE BEACON AMERICA INSURANCE COMPANY,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>B&amp;L CASING SERVICE, LLC, et al.,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>) ) ) ) ) ) ) ) ) ) ) )</p>	<p><b>1:12-CV-1676 AWI JLT</b></p> <p><b>ORDER CLOSING CASE IN LIGHT OF PLAINTIFF' RULE 41(a) NOTICE OF DISMISSAL WITHOUT PREJUDICE AND ORDER ON MOTION TO DISMISS</b></p> <p><b>(Doc. Nos. 7, 12)</b></p>
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Defendant B&L Casing has filed a motion to dismiss. Hearing on that motion is set for January 7, 2013. However, on December 20, 2012, Plaintiff filed a notice of dismissal without prejudice of this case pursuant to Federal Rule of Civil Procedure 41(a)(1).

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

(A) . . . the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. . . . (B) Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

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 judgment. *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing *Hamilton v. Shearson-Lehman American Express*, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant's service of an answer or motion for summary judgment. The dismissal is effective on filing and no court order is required. *Id.*

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

1 The defendants have neither filed nor served answers or motions for summary judgment.  
2 Because Plaintiff has exercised its right to voluntarily dismiss its complaint without prejudice  
3 under Rule 41(a)(1), this case has terminated. See Wilson, 111 F.3d at 692. Defendant's motion  
4 to dismiss will be denied as moot and the January 7 hearing will be vacated.  
5

6  
7 Therefore, IT IS HEREBY ORDERED that:

- 8 1. The Clerk is ordered to close this case in light of Plaintiff's Rule 41(a)(1) dismissal  
9 without prejudice;  
10  
11 2. The January 7, 2013, hearing on Defendant's motion to dismiss is VACATED; and  
12  
13 3. Defendant's motion to dismiss (Doc. No. 7) is DENIED as moot.

14 IT IS SO ORDERED.

15 Dated: December 21, 2012

  
UNITED STATES DISTRICT JUDGE