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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MALEE HER, et al.,

Case No. 1:14-cv-01453-SKO

Plaintiffs,

v.

**ORDER DIRECTING CLERK OF
COURT TO CLOSE THIS CASE**

AVIVA LIFE AND ANNUITY CO.,

Defendant,

AVIVA LIFE AND ANNUITY CO.,

Counter Claimant,

v.

MALEE HER and TUNG HER-MOUA,

Counter Defendants.

On January 15, 2016, the parties filed a stipulation for dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) that this action be dismissed with prejudice, including all counterclaims, and that each party shall bear their own fees and costs.

1 In relevant part, Rule 41(a)(1)(A) provides as follows:

2 [A] plaintiff may dismiss an action without a court order by filing: (i) a notice of
3 dismissal before the opposing party serves either an answer or a motion for
4 summary judgment; or (ii) a stipulation of dismissal signed by all parties who have
appeared.

5 Fed. R. Civ. P. 41(a)(1)(A). Rule 41 thus allows the parties to dismiss an action voluntarily, after
6 service of an answer, by filing a written stipulation to dismiss signed by all of the parties who have
7 appeared, although an oral stipulation in open court will also suffice. *See Eitel v. McCool*, 782
8 F.2d 1470, 1472-73 (9th Cir. 1986).

9 Once the stipulation between the parties who have appeared is properly filed or made in
10 open court, no order of the court is necessary to effectuate dismissal. Caselaw concerning
11 stipulated dismissals under Rule 41(a)(1)(A)(ii) is clear that the entry of such a stipulation of
12 dismissal is effective automatically and does not require judicial approval. *Commercial Space*
13 *Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999). "The plaintiff may dismiss some
14 or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice," and the
15 dismissal "automatically terminates the action as to the defendants who are the subjects of the
16 notice." *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).

17 Because the parties have filed a stipulation for dismissal of this case with prejudice under
18 Rule 41(a)(1)(A)(ii) that is signed by all parties who have made an appearance, this case has
19 terminated. Fed. R. Civ. P. 41(a)(1)(A)(ii).

20 Accordingly IT IS HEREBY ORDERED that the Clerk of the Court is to close this case.

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22 IT IS SO ORDERED.

23 Dated: January 19, 2016

/s/ Sheila K. Oberto
24 UNITED STATES MAGISTRATE JUDGE

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