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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **CAROLYN E. MINER, TRUSTEE OF**
9 **THE MILTONMINER FAMILY TRUST,**

10 **Plaintiff**

11 **v.**

12 **JPMORGAN CHASE BANK, N.A.,**

13 **Defendant**

CASE NO. 1:16-CV-0626 AWI JLT

**ORDER CLOSING CASE IN LIGHT OF
NOTICE OF DISMISSAL**

14 Plaintiff has filed a notice of dismissal without prejudice pursuant to Fed. Rule Civ. Proc.
15 41(a)(1)(A)(i). Doc. 24. The applicable rule states

16 (A) Without a Court Order...the plaintiff may dismiss an action without a court
17 order by filing:

18 (i) a notice of dismissal before the opposing party serves either an answer or
a motion for summary judgment....

19 (B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without
20 prejudice. But if the plaintiff previously dismissed any federal- or state-court action
based on or including the same claim, a notice of dismissal operates as an
adjudication on the merits.

21 Fed. Rule Civ. Proc. 41(a). A plaintiff's notice of dismissal under Rule 41(a)(1)(A) is effective
22 immediately and does not require separate approval from the court. Commercial Space Mgmt. Co.
23 v. Boeing Co., 193 F.3d 1074, 1077 (9th Cir. 1999).

24 In this case, Defendant has filed a motion to dismiss but has not yet filed (or served) either
25 an answer or a motion for summary judgment. Thus, Plaintiff's notice of dismissal appears to be
26 properly filed and self-executing. Plaintiff seeks to dismiss her claims without prejudice.
27 Defendant's briefing on the motion to dismiss does not state or suggest that Plaintiff has
28 previously dismissed a prior action based on the same claim. See Doc. 18. Based on this history,

1 it appears that the dismissal is properly without prejudice. This dismissal also renders Defendant's
2 motion to dismiss moot.

3 Accordingly, IT IS HEREBY ORDERED that:

4 Defendant's Rule 12(b)(6) motion to dismiss (Doc. 18) is DENIED as moot.

5 The Clerk of the Court shall close this case in light of Plaintiff's Rule 41(a)(1) voluntary
6 dismissal.

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8 IT IS SO ORDERED.

9 Dated: November 21, 2016



10 SENIOR DISTRICT JUDGE