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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
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7 **CAROLYN E. MINER, TRUSTEE OF**
8 **THE MILTONMINER FAMILY TRUST,**

9 **Plaintiff**

10 **v.**

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

12 **Defendant**

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

**ORDER RE: MOTION FOR
RECONSIDERATION**

(Doc. 26)

13 Plaintiff filed a Fed. Rule Civ. Proc 41(a)(1)(A)(i) notice of voluntary dismissal without
14 prejudice. Doc. 24. The court reviewed the filing and found it was a valid Rule 41(a)(1)(A)(i)
15 dismissal, ordering that

16 Accordingly, IT IS HEREBY ORDERED that:

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

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

20 Doc. 25, 2:3-6. In interpreting the effect of a voluntary dismissal, Rule 41 states that "Unless the
21 notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff
22 previously dismissed any federal- or state-court action based on or including the same claim, a
23 notice of dismissal operates as an adjudication on the merits." Fed. R. Civ. Proc. 41(a)(1)(B). As
24 part of the analysis confirming that the notice qualified as a Rule 41(a)(1)(A)(i) dismissal and did
25 not require court approval under Rule 41(a)(2), the court erroneously stated that as Plaintiff had
26 not previously dismissed a prior action based on the same claim and thus "it appears that the
27 dismissal is properly without prejudice." Doc. 25, 2:1. Defendant points out that Plaintiff has
28 previously dismissed similar claims in the past and has filed a motion for reconsideration asking

1 for an affirmative order dismissing Plaintiff's claims with prejudice. Doc. 26, 1:4-8.

2 As stated in the prior order, a Rule 41(a)(1)(A)(i) dismissal is self-executing and does not
3 require any separate action from the court. It is instantly effective upon filing of the notice by a
4 plaintiff. The purpose of the order issued was to close the case and resolve the pending motion to
5 dismiss. The Ninth Circuit has definitively stated that

6 once a notice of voluntary dismissal is filed, the district court in which the action is
7 pending loses jurisdiction and cannot exercise discretion with respect to the terms
8 and conditions of the dismissal. Nor may it rule at the defendant's request on
9 whether the plaintiff's notice of dismissal in a second action is with prejudice or
10 without prejudice

11 the district court has no role to play once a notice of dismissal under Rule 41(a)(1)
12 is filed. The action is terminated at that point, as if no action had ever been filed.
13 Therefore, the district court has no power to place a condition on a Rule 41(a)(1)
14 dismissal at the defendant's request. This would conflate Rule 41(a)(1) dismissals
15 with Rule 41(a)(2) dismissals, contrary to their different language and purpose. By
16 the same token, the label a plaintiff attaches to a second Rule 41(a)(1) dismissal is
17 irrelevant if a subsequent action is filed 'based on or including the same claim,'
18 because Rule 41(a)(1) itself instructs that such a dismissal 'operates as an
19 adjudication upon the merits.' See Fed.R.Civ.P. 41(a)(1).

20 Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1076 and 1080 (9th Cir. 1999). The
21 record in this case can be clarified to reflect that Plaintiff appears to have had dismissed similar
22 claims against Defendant in the past but the relief requested is not available in this forum. The
23 determination of whether Rule 41(a)(1)(B) applies to render the dismissal an adjudication on the
24 merits is more properly the province of a later court if Plaintiff decides to file suit against
25 Defendant again. See 9 Wright and Miller, Federal Practice and Procedure § 2368 (2nd ed. 1995)
26 ("When a second dismissal is by notice under Rule 41(a), it is, by operation of the terms of the
27 rule, an adjudication on the merits; thus, it is with prejudice even though the notice states that the
28 dismissal is without prejudice").

29 Defendant's motion for reconsideration is DENIED.

30 IT IS SO ORDERED.

31 Dated: January 17, 2017


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33 SENIOR DISTRICT JUDGE