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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

VERRAGIO, LTD,  
  
                    Plaintiff,  
  
                    v.  
MALAKAN DIAMOND CO.,  
                    Defendant.

Case No.: 16-cv-01647-DAD-SKO

**ORDER DISMISSING CERTAIN  
CROSS-DEFENDANTS WITHOUT  
PREJUDICE**

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MALAKAN DIAMOND CO.,  
  
                    Counterclaimant/Cross-Claimant,  
                    v.  
VERRAGIO, LTD.: AE JEWELERS, INC.; AE  
JEWELERS OF APPLETON,, LLC.; HAROLD  
JAFFE JEWELRY, INC.; JENSEN JEWELERS  
OF IDAHO, LLC: and DOES 1 to 10, *inclusive*,  
  
                    Counterclaim and Cross-Claim  
                    Defendants.

On March 28, 2017, Cross-claimant Malakan Diamond Co. filed a notice of voluntary dismissal for Cross-defendants Jensen Jewelers of Idaho, LLC, Harold Jaffe Jewelry, Inc. and AE Jewelers, Inc., without prejudice. (Doc. 33.) Cross-claimant’s notice is provided under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

The Ninth Circuit has 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

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order is required. *Id.* The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice. *Id.*; *Pedrina v. Chun*, 987 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice. *Concha*, 62 F.2d at 1506. Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff's right to commence another action for the same cause against the same defendants. *Id.* (citing *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had been brought. *Id.*”

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

No answers to the cross-complaint and no motions for summary judgment have been filed in this case, and no such answers or motions for summary judgment appear to have been served.

*See Wilson*, 111 F.3d at 692.

Because Cross-claimant filed a notice of dismissal of this case without prejudice under Rule 41(a)(1)(A)(i), this case has automatically terminated as to Cross-defendants Jensen Jewelers of Idaho, LLC, Harold Jaffe Jewelry, Inc., and AE Jewelers, Inc. Fed. R. Civ. P. 41(a)(1)(A)(i). Accordingly, the Clerk of the Court is directed to TERMINATE Cross-defendants Jensen Jewelers of Idaho, LLC, Harold Jaffe Jewelry, Inc., and AE Jewelers, Inc.

IT IS SO ORDERED.

Dated: March 28, 2017

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