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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 CROSS-
DEFENDANT AE JEWELERS OF
APPLETON, LLC WITHOUT
PREJUDICE**

(Doc. 55)

MALAKAN DIAMOND CO.,

Counterclaimant/Cross-Claimant,

v.

VERRAGIO, LTD.; AE JEWELERS OF
APPLETON, LLC.; and DOES 1 to 10,
inclusive,

Counterclaim and Cross-Claim
Defendants.

On August 7, 2017, Cross-claimant Malakan Diamond Co. filed a notice of voluntary dismissal for Cross-defendant AE Jewelers of Appleton, LLC, without prejudice. (Doc. 55.) 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 order is required. *Id.*

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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-defendant AE Jewelers of Appleton, LLC. Fed. R. Civ. P. 41(a)(1)(A)(i). Accordingly, the Clerk of the Court is directed to TERMINATE Cross-defendant AE Jewelers of Appleton, LLC.

IT IS SO ORDERED.

Dated: August 8, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

YARRA, KHARAZI,
& ASSOCIATES
CLASON & ANIOTZBEHERE
2000 Fresno Street
Fresno, CA 93721