

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JOSE ACOSTA,

Plaintiff,
v.
EXTREME CONNECTIONS, INC. dba
EXTREME CONNECTIONS, et al.,
Defendants.

Case No.: 17-cv-01215-AWI-SKO

**ORDER DISMISSING DEFENDANT
GRASCIELA G. GOMEZ WITHOUT
PREJUDICE**

(Doc. 6)

On September 18, 2017, Plaintiff Jose Acosta filed a notice of voluntary dismissal for Defendant Grasciela G. Gomez, without prejudice. (Doc. 6.) Plaintiff’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.* 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 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 Plaintiff filed a notice of dismissal of this case without prejudice under Rule 41(a)(1)(A)(i), this case has automatically terminated as to Defendant Graciela G. Gomez. Fed. R. Civ. P. 41(a)(1)(A)(i). Accordingly, the Clerk of the Court is directed to TERMINATE Defendant Graciela G. Gomez.

IT IS SO ORDERED.

Dated: September 19, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE