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

10 UNITED STATES OF AMERICA, et al.,

11 Plaintiffs,

12 v.

13 DYNAMIC MEDICAL SYSTEMS, LLC, et  
14 al.,

15 Defendants.

Case No. 1:17-cv-01757-NONE-SAB

ORDER DIRECTING THE CLERK OF THE  
COURT TO TERMINATE INVACARE  
CORPORATION AS A PARTY IN THIS  
ACTION AND ADMINISTRATIVELY  
TERMINATION INVACARE’S MOTION  
TO DISMISS AS MOOT

(ECF Nos. 108, 110)

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17 On September 28, 2020, Defendant Invacare Corporation filed a motion to dismiss. On  
18 October 6, 2020, Plaintiff filed a notice of voluntary dismissal of Defendant Invacare  
19 Corporation pursuant to Federal Rule of Civil Procedure 41(a).

20 “[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his  
21 action prior to service by the defendant of an answer or a motion for summary judgment.’ ”  
22 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)  
23 (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Rule 41(a) of the  
24 Federal Rules of Civil Procedure allows a party to dismiss some or all of the defendants in an  
25 action through a Rule 41(a) notice. Wilson, 111 F.3d at 692; see also Concha v. London, 62 F.3d  
26 1493, 1506 (9th Cir. 1995) (“The plaintiff may dismiss either some or all of the defendants—or  
27 some or all of his claims—through a Rule 41(a)(1) notice.”); but see Hells Canyon Pres.  
28 Council v. U.S. Forest Serv., 403 F.3d 683, 687 (9th Cir. 2005) (The Ninth Circuit has “only

1 extended the rule to allow the dismissal of all claims against one defendant, so that a defendant  
2 may be dismissed from the entire action.”). “Filing a notice of voluntary dismissal with the court  
3 automatically terminates the action as to the defendants who are the subjects of the notice.”  
4 Concha, 62 F.3d at 1506.

5 Here, no defendant has filed an answer or a motion for summary judgment so dismissal  
6 under Rule 41(a)(1) is appropriate. Further, due to the dismissal of Defendant Invacare, the  
7 motion to dismiss filed on September 28, 2020 shall be terminated as moot.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The Clerk of the Court is DIRECTED to terminate Invacare Corporation as a  
10 defendant in this action; and
- 11 2. The Clerk of the Court is DIRECTED to administrative terminate Defendant  
12 Invacare’s motion to dismiss (ECF No. 108) as it is moot.

13 IT IS SO ORDERED.

14 Dated: October 6, 2020

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17 UNITED STATES MAGISTRATE JUDGE