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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PAMELA PFITZER, aka PAMELA  
EBERT,

Plaintiff,

v.

BENEFICIAL CALIFORNIA, INC., ET.  
AL.,

Defendant.

No. 2:09-cv-02634-MCE-AC

**ORDER**

On December 23, 2013, Plaintiff Pamela Pfitzer, (“Plaintiff”), filed a notice of voluntary dismissal pursuant to Federal Rules of Civil Procedure 41(a)<sup>1</sup> as to all claims in this action without prejudice as to Defendants Mann Bracken LLP, (“Mann Bracken”), and Cheryl E. Rose, Receiver for Mann Bracken LLC, (“Receiver”). Notice, Dec. 23, 2013, ECF No. 53.<sup>2</sup> Under Rule 41(a)(1)(A)(i), a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41.

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<sup>1</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless otherwise stated.


<sup>2</sup>The Court dismissed all claims against Defendant Beneficial California, Inc. in this matter on 6/11/2010. ECF No. 36, 39. Accordingly, the only remaining Defendants in this action are Mann Bracken and its Receiver. See ECF No. 52.

1 On December 27, 2013, in response to this Court's Order to Show Cause (ECF  
2 Nos. 51, 52), the Receiver informed the Court that "[d]espite having a good faith  
3 defense, the Receiver has not retained local counsel to defend the action since there are  
4 insufficient funds to pay all claims in full AND the Plaintiff's claim would be addressed in  
5 the Receivership proceeding after a claim is filed." Response, Dec. 27, 2013, ECF No.  
6 55 (emphasis in original). Although the Receiver asserted that the Receivership Estate  
7 of Mann Bracken may have a good faith defense to Plaintiff's claim, neither Mann  
8 Bracken LLP nor its Receiver filed an answer or a motion for summary judgment in  
9 response to Plaintiff's Complaint. Id.; see ECF Nos. 52, 53, 55. Therefore, this Court  
10 may dismiss this action pursuant to Rule 41(a)(1)(A)(i).

11 In light of Plaintiff's request for voluntary dismissal (ECF No. 53), on the Court's  
12 own motion pursuant to Rule 41(a)(1)(A)(i), this Court DISMISSES without prejudice  
13 Plaintiff's claim against Mann Bracken and its Receiver. The Clerk of the Court is  
14 directed to CLOSE this case.

15 IT IS SO ORDERED.

16 Dated: December 31, 2013

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20 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
21 UNITED STATES DISTRICT COURT  
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