

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  
For the Northern District of California

UNITED STATES DISTRICT COURT  
Northern District of California  
San Francisco Division

ALICE MONROE,

No. C 12-03840 LB

Plaintiff,

**ORDER RE: PLAINTIFF’S NOTICE OF DISMISSAL**

v.

ORCHARD SUPPLY HARDWARE, *et al.*,

Defendant.

Plaintiff Alice Monroe filed this action in state court on February 10, 2012 and Defendants Orchard Supply Hardware and Bruce Williams removed to this court on July 23, 2012. Thus, the 120-day time period to effect service under Federal Rule of Civil Procedure 4(m) has expired. Monroe has not filed proof of service upon Defendant Jeff Caminata. *See* Docket.

On November 30, 2012, the court ordered Monroe to show cause why her claims against Caminata should not be dismissed for failure to prosecute. *See* Order to Show Cause, ECF No. 15. The next day, Monroe filed a “Request for Dismissal Without Prejudice as to Named Individual Defendant Jeff Caminata in Response to OSC.” ECF No. 16. Monroe acknowledges that she has not served Caminata and asks the court to dismiss her claims against him without prejudice.

Under Federal Rule of Civil Procedure 41(a)(1)(A), subject to certain inapplicable restrictions, “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” Under Rule 41(a)(1)(A)(i), a party may unilaterally dismiss all of its claims against one defendant in a multi-

1 defendant suit. *See Pedrina v. Chun*, 987 F.2d 608, 609 (9th Cir. 1993) (“We agree with the First,  
2 Third, Fifth, and Eighth circuits that Rule 41(a)(1) allows a plaintiff to dismiss without a court order  
3 any defendant who has yet to serve an answer or a motion for summary judgment.”).

4 The court construes Monroe’s request for dismissal as a notice of voluntary dismissal under Rule  
5 41(a)(1)(A)(i). Alternatively, the court can dismiss under Rule 4(m) without prejudice.  
6 Accordingly, Monroe’s claims against Jeff Caminata are dismissed without prejudice. The clerk of  
7 the court shall terminate Caminata as a Defendant in this case.

8 **IT IS SO ORDERED.**

9 Dated: December 3, 2012



10 LAUREL BEELER  
11 United States Magistrate Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28