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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

5 JANET CARROL,

6 Plaintiff,

7 vs.

8 DAVID JENKINS, NEXT PROTEINS, INC.,
9 and DOES 1-10,

10 Defendant.

CASE NO. 12CV279 JLS (BLM)

**ORDER RE: NOTICE OF
DISMISSAL WITHOUT
PREJUDICE THIRD CAUSE OF
ACTION ONLY**

(ECF No. 3)

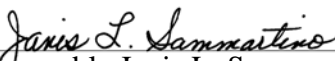
11 On February 3, 2012, Plaintiff Janet Carrol filed a notice of dismissal without prejudice
12 third cause of action only, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (Notice,
13 ECF No. 3)

14 Voluntary dismissal is governed by Federal Rule of Civil Procedure 41. Plaintiffs may
15 voluntarily dismiss actions without a court order before the opposing party serves an answer or
16 motion for summary judgment, or with the opposing party's consent. Fed. R. Civ. P. 41(a)(1)(A).
17 However, the Ninth Circuit has held that a voluntary dismissal may not be used to dismiss fewer
18 than all claims against a single defendant. *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389,
19 1392 (9th Cir. 1988). Instead, Rule 15(a) is the appropriate mechanism by which a plaintiff may
20 eliminate an issue, or one or more but less than all of several claims, without dismissing as to any
21 of the defendants. *Id.* (citing 5 J. Moore, L. Lucas & J. Wicker, *Moore's Federal Practice*
22 ¶ 41.06-1 at 41-83 to -84 (1987)).

23 Accordingly, the Court *sua sponte* denies Plaintiff's notice of voluntary dismissal of the
24 third cause of action without prejudice to Plaintiff amending her complaint pursuant to Rule 15(a).

25 **IT IS SO ORDERED.**

26 DATED: February 6, 2012

27 
28 Honorable Janis L. Sammartino
United States District Judge