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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HERB REED ENTERPRISES, INC., et
al.,

Plaintiffs,

v.

JEAN BENNETT, et al.,

Defendants.

2:10-CV-1981 JCM (RJJ)

ORDER

Presently before the court is plaintiff’s motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a). Defendant Jean Bennett has not filed an opposition.

Plaintiff asserts that default judgment has been entered against defendants Five Platters, Inc. and Personality Productions, Inc. Plaintiff further asserts that after the grant of partial summary judgment, only count IV of the complaint, asserting slander of title, remains against defendant Jean Bennett. Plaintiff does not wish to pursue this claim.

Federal Rule of Civil Procedure 41(a)(1) provides that a plaintiff may, without court order, dismiss an action by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment” or “a stipulation of dismissal signed by all parties who have appeared.” Neither of these possibilities exist in the instant case because Bennett filed an answer and cannot be located for purposes of stipulating to the dismissal. Thus, plaintiff must resort to the procedure detailed by Rule 41(a)(2). That rule provides: “An action may be dismissed at the

James C. Mahan
U.S. District Judge

