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6	UNITED STATES DISTRICT COURT
7	EASTERN DISTRICT OF CALIFORNIA
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9	E. & J. GALLO WINERY, CASE NO. CV F 04-5153 LJO DLB
10	Plaintiff, ORDER TO DISMISS ACTION vs.
11	CANTINE RALLO, S.p.A.,
1213	Defendant.
14	This Court issued its April 23, 2007 order to require the parties "no later than May 21, 2007,
15	to file a stipulation and order to dismiss this action in its entirety." (Bold in original.) The parties'
16	counsel filed declarations to dispute whether the dismissal of this action is with prejudice and submitted
17	their respective requests to dismiss this action. Plaintiff E. & J. Gallo Winery ("Gallo") further
18	requested to impose a \$1,000 sanction against counsel for plaintiff Cantine Rallo, S.p.A. ("Rallo")for
19	legal fees to address the dismissal issue. This Court determined that based on the declarations, this
20	Court was unable to ascertain the parties' settlement discussions and negotiations on dismissal with or
21	without prejudice. This Court's May 22, 2007 order required the parties, no later than May 31, 2007,
22	to submit declarations to further describe the parties' specific settlement discussions and negotiations
23	on dismissal of this action with or without prejudice.
24	Gallo's declarations indicate that the counsel negotiating settlement contemplated dismissal
25	without prejudice and that the dismissal dispute what created by Rallo counsel Jonathan Moskin, who
26	admitted that he was not handling settlement negotiations. Neither Rallo nor Mr. Moskin filed
27	declarations to comply with this Court's May 22, 2007 order. As such, this Court surmises that Mr.
28	Moskin wrongly interjected the dismissal with prejudice notion, especially given that the parties'

settlement agreement did not require dismissal with prejudice. See F.R.Civ.P. 41(a)(1). On the basis of good cause, this Court: DISMISSES this action in its entirety under F.R.Civ.P. 41(a)(2) and DIRECTS the clerk 1. to close this action; and ORDERS Jonathan Moskin and White & Case LLP, no later than June 15, 2007, to pay 2. Gallo \$1,000. IT IS SO ORDERED. **Dated:** <u>June 1, 2007</u> /s/ Lawrence J. O'Neill UNITED STATES DISTRICT JUDGE