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Attorneys for Defendant

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JENNIFER MIKALACKI,

Plaintiff,

v.

BINDLE BOTTLE, LLC,

Defendant.

Case No. 3:23-cv-00881-VC

**REQUEST FOR VOLUNTARY
DISMISSAL WITH PREJUDICE**

1 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Paragraph 54 of the Court’s
2 Standing Order for Civil Cases, Plaintiff Jennifer Mikalacki (“Plaintiff”) and Defendant Bindle
3 Bottle, LLC (“Defendant”) (collectively, the “Parties”) hereby requests that the Court dismiss the
4 above-captioned action with prejudice. In support, Plaintiff states as follows:

5 Plaintiff has not yet moved for class certification, and no class has been certified. Defendant
6 vigorously disputes Plaintiff’s claims, and believes Plaintiff will encounter challenges in seeking
7 class certification. In any event, no member of any putative class will be bound by the dismissal.
8 Where, as here, Plaintiff does not seek dismissal of the class members’ claims with prejudice, “they
9 are not impacting the rights of potential class members.” *Houston v. Cintas Corp.*, 2009 U.S. Dist.
10 LEXIS 33704 (N.D. Cal. Apr. 3, 2009).

11 Moreover, further notice of the dismissal would not be warranted under *Diaz v. Trust*
12 *Territory of the Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). First, Plaintiff is not aware of
13 any putative class members who are relying on the pendency of this case, which has received little
14 to no mainstream publicity and only rare mentions in the legal press. Second, the pendency of this
15 putative class action tolled the applicable statute of limitations for individual members of the putative
16 class. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-54 (1988). To the extent that any
17 individual member of some putative class has a viable claim, Plaintiff has no reason to believe that
18 they will lose such a claim as a result of this dismissal. Third, Plaintiff’s counsel represents that there
19 has been no concession of putative class interests by the Plaintiff or their counsel, much less in order
20 to further their own interests.

21 For all of these reasons, and because notification to unidentified putative class members, if
22 possible, would be inordinately burdensome and costly, Plaintiff respectfully submits that further
23 notice of the dismissal is unwarranted. Plaintiff thus hereby requests that the Court dismiss the entire
24 Action with prejudice.

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Dated: January 30, 2025

By: /s/ L. Timothy Fisher

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Respectfully submitted,

By: /s/Kelly Ann Tran

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Attorneys for Defendant

SIGNATURE ATTESTATION

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I, L. Timothy Fisher, as the ECF user and filer of this document, attest pursuant to N.D. Cal. L.R. 5-1(i)(3) that each of the other signatories have concurred in the filing of the document.

Dated: January 30, 2025

/s/ L. Timothy Fisher
L. Timothy Fisher