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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Sandra Wiltcher, a single woman,
10 Plaintiff,

No. CV-13-00409-PHX-GMS

ORDER

11 v.

12 MetLife Bank NA, a Texas corporation,
13 named as Met Life Bank NA dba MetLife
14 Home Loans; Freddie Mac, a Virginia
15 corporation; Quality Loan Service, a
16 California corporation; McCarthy Holthus
& Levine, an Arizona professional
17 corporation; and Matthew A. Silverman, an
individual,

18 Defendants.

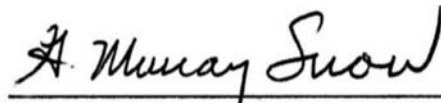
19 Pending before the Court is the Motion to Dismiss of Defendants McCarthy,
20 Holthus and Levine (“MHS”) and Matthew A. Silverman. (Doc. 6.) Also pending is
21 Plaintiff Sandra Wiltcher’s Motion to Dismiss (Voluntary Dismissal). (Doc. 7.)
22 Defendants MHS and Silverman object to Wiltcher’s Voluntary Dismissal. (Doc. 8.)
23 Defendants have filed neither an answer nor a summary judgment motion.

24 Under Federal Rule of Civil Procedure 41(a)(1), a plaintiff has an absolute right to
25 voluntarily dismiss her action before the defendant serves an answer or moves for
26 summary judgment. *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995). The
27 dismissal is effective on filing and no court order is required. *Id.* Here, none of the
28 Defendants have served an answer. Nor has any Defendant filed a motion for summary

1 judgment. MHS and Silverman assert, without citation, that Wiltcher “has no authority to
2 voluntary [sic] dismiss Complaint after an appearance has been made.” (Doc. 8 at 1.)
3 They argue that Wiltcher’s claims against them should be dismissed with prejudice.
4 However, their Motion to Dismiss under Rule 12(b)(6), as neither an answer nor a motion
5 for summary judgment, does not terminate Wiltcher’s Rule 41(a)(1) right of dismissal by
6 notice. *Miller v. Reddin*, 422 F.2d 1264, 1266 (9th Cir. 1970) (ordering district court to
7 dismiss pursuant to notice of voluntary dismissal though a hearing on defendants’
8 12(b)(6) motion to dismiss). The Court notes that even if Defendants’ Motion to Dismiss
9 had been considered on the merits, it would not necessarily result in Wiltcher’s claims
10 being dismissed with prejudice. “Dismissal of a pro se complaint without leave to amend
11 is proper only if it is absolutely clear that the deficiencies of the complaint would not be
12 cured by amendment.” *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007).

13 Defendants’ Motion to Dismiss (Doc. 6) is therefore **DENIED AS MOOT** in light
14 of Wiltcher’s Notice of Voluntary Dismissal (Doc. 7). The Clerk of Court is directed to
15 terminate the action.

16 Dated this 23rd day of July, 2013.

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20 |G. Murray Snow
21 United States District Judge
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