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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELI LILLY AND COMPANY,

 Plaintiff,

 v.

JOHN DEREK GITMED, et al.,

 Defendants.

Case No. 1:16-cv-00178-DAD-SAB

ORDER DIRECTING CLERK OF COURT
TO TERMINATE DEFENDANT JOHN
DEREK GITMED FROM THIS ACTION

(ECF No. 59)

This action was filed on February 8, 2016. (ECF No. 1.) On August 25, 2017, Plaintiff filed a notice of voluntary dismissal of Defendant John Derek Gitmed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. (ECF No. 59.)

“[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has held that Rule 41(a) allows a plaintiff to dismiss without a court order any defendant who has yet to serve an answer or motion for summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th Cir. 1993). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can’t complain, and the district court lacks jurisdiction to do anything about it.” Commercial Space Mgmt. Co., Inc., 193

1 F.3d at 1078. In this action, Defendant John Derek Gitmed has not filed an answer or motion for
2 summary judgment. Therefore, Plaintiff has voluntarily dismissed Defendant John Derek
3 Gitmed.

4 The only defendant remaining in this action is Anthony Pollino, Jr. (“Defendant
5 Pollino”). On May 4, 2017, the Court granted in part and denied in part Plaintiff’s application
6 for entry of default judgment (ECF No. 44) against Defendant Pollino. (ECF No. 56.) Plaintiff’s
7 application for entry of default judgment against Defendant Pollino was granted as to liability,
8 but denied as to damages and injunctive relief. (ECF No. 56.)

9 Accordingly, the Clerk of the Court is DIRECTED to terminate Defendant John Derek
10 Gitmed from this action. Plaintiff shall file an application for entry of default judgment against
11 Defendant Pollino within thirty (30) days of the date of service of this order.

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13 IT IS SO ORDERED.

14 Dated: August 28, 2017


UNITED STATES MAGISTRATE JUDGE

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