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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIT P. JORY, an individual,  
  
Plaintiff,  
  
v.  
  
BANK OF AMERICA, N.A.; CALIBER  
HOME LOANS, INC.; SUMMIT  
MANAGEMENT COMPANY; and DOES  
1 through 20, inclusive,  
  
Defendants.

No. 1:16-cv-00941-DAD-MJS

ORDER DIRECTING THE CLERK OF THE  
COURT TO TERMINATE DEFENDANT  
BANK OF AMERICA, N.A.

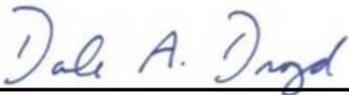
(Doc. Nos. 7, 21)

On October 7, 2016, plaintiff filed a notice of voluntary dismissal of defendant Bank of America, N.A. with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (Doc. No. 21.) Under Rule 41(a), a plaintiff may dismiss an action without a court order if he or she files “a notice or 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.” Fed. R. Civ. Pro. 41(a)(1)(A)(i)–(ii). Here, defendant Bank of America, N.A. has not filed an answer or a motion for summary judgment, but has filed a motion to dismiss. (See Doc. No. 7.) “Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1).” *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing *Miller v. Reddin*, 422 F.2d 1264, 1265 (9th Cir. 1970)). In light of this,

1 defendant Bank of America, N.A. has been dismissed with prejudice. *See* Fed. R. Civ. P.  
2 41(a)(1)(A)(i); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). Accordingly, the  
3 court directs the Clerk of Court to terminate defendant Bank of America, N.A. The pending  
4 motion to dismiss by defendant Bank of America, N.A. (Doc. No. 7) is rendered moot by this  
5 order.

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7 IT IS SO ORDERED.

8 Dated: October 11, 2016

  
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UNITED STATES DISTRICT JUDGE

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