

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 RACHEL BRYANT,  
12 Plaintiff,  
13 v.  
14 ELEAZAR CARRILLO, et al.,  
15 Defendants.

Case No. 1:17-cv-00311-DAD-SAB  
ORDER RE NOTICE OF VOLUNTARY  
DISMISSAL  
(ECF No. 13)

16  
17 On May 23, 2017, Plaintiff filed a notice of settlement informing the Court that the  
18 parties have reached settlement resolving this action. (ECF No. 11.) On May 24, 2017, the  
19 Court ordered the parties to file dispositional documents on or before June 23, 2017. (ECF No.  
20 12.) On June 8, 2017, Plaintiff filed a notice of voluntary dismissal, in which Plaintiff seeks to  
21 dismiss this action with prejudice in its entirety pursuant to Federal Rule of Civil Procedure  
22 41(a)(1)(A)(i). (ECF No. 13.)

23 “[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his  
24 action prior to service by the defendant of an answer or a motion for summary judgment.’ ”  
25 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)  
26 (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)).

27 However, in this action, all defendants have filed answers. (ECF Nos. 9, 10.) Therefore,  
28 Plaintiff cannot voluntarily dismiss this action pursuant to Rule 41(A)(1)(A)(i).

1 Plaintiff can dismiss this action without a court order pursuant to Federal Rule of Civil  
2 Procedure 41(a)(1)(A)(ii), which provides that a “plaintiff may dismiss an action without a court  
3 order by filing a stipulation of dismissal signed by all parties who have appeared.”

4 Plaintiff can seek to dismiss this action by court order pursuant to Federal Rule of Civil  
5 Procedure 41(a)(2), which permits a plaintiff to dismiss an action pursuant to a court order and  
6 on terms that the court considers proper. A motion for voluntary dismissal under Rule 41(a)(2)  
7 is addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber  
8 Co. Inc., 679 F.2d 143, 145 (9th Cir. 1982).

9 Accordingly, it is HEREBY ORDERED that the parties shall file dispositional documents  
10 in compliance with the Court’s May 24, 2017 order on or before June 23, 2017.

11 IT IS SO ORDERED.

12 Dated: June 9, 2017

13   
14 \_\_\_\_\_  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28