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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL S. RUIZ,
Plaintiff,
v.
WELLS FARGO, N.A., et al.,
Defendants.

Case No. 1:17-cv-00321-LJO-SAB
ORDER DIRECTING CLERK OF THE
COURT TO TERMINATE DEFENDANT
WELLS FARGO BANK, N.A. AS A
PARTY IN THIS ACTION PURSUANT TO
FED. R. CIV. P. 41(a)
(ECF No. 56)

On July 20, 2017, Plaintiff filed a notice of voluntary dismissal with prejudice as to Defendant Wells Fargo Bank, N.A. only.

“[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)). Rule 41(a) of the Federal Rules of Civil Procedure also allows a party to dismiss some or all of the defendants or claims in an action through a Rule 41(a) notice. 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).

1 “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the
2 parties are left as though no action had been brought, the defendant can’t complain, and the
3 district court lacks jurisdiction to do anything about it.” Commercial Space Mgmt. Co., Inc., 193
4 F.3d at 1078. Here, Defendant Wells Fargo Bank, N.A. has filed a motion to dismiss, but the
5 Ninth Circuit has held that a pending motion to dismiss is not equivalent to an answer or motion
6 for summary judgment. Miller v. Reddin, 422 F.2d 1264, 1266 (9th Cir. 1970).

7 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is DIRECTED to
8 terminate Defendant Wells Fargo Bank, N.A. in this action.

9
10 IT IS SO ORDERED.

11 Dated: July 21, 2017


UNITED STATES MAGISTRATE JUDGE