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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMANDA MCDONALD,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1:17-cv-00385-AWI-SAB

ORDER DIRECTING CLERK OF COURT
TO CLOSE CASE AND ADJUST DOCKET
TO REFLECT VOLUNTARY DISMISSAL

(ECF No. 17)

This action was filed on March 15, 2017. (ECF No. 1.) On July 21, 2017, Defendant United States filed an answer, a counterclaim against Plaintiff, and third-party claims against Fred Whitten and Daniel Madriaga. (ECF No. 11.) Plaintiff has been served, but has not yet responded to Defendant’s counterclaim. Defendant has not yet served Third-Party Defendants Fred Whitten and Daniel Madriaga. On August 15, 2017, Plaintiff and Defendant filed a stipulation to dismiss this action and all respective claims of Plaintiff and Defendant with prejudice with each party to bear its own costs and fees. (ECF No. 17.)

Rule 41(c) provides that a counterclaim or third-party claim may be voluntarily dismissed under Rule 41(a)(1)(A)(i) before a responsive pleading is served. “[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

1 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has held that Rule 41(a) allows a plaintiff to
2 dismiss without a court order any defendant who has yet to serve an answer or motion for
3 summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th Cir. 1993). “[A] dismissal under
4 Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no
5 action had been brought, the defendant can’t complain, and the district court lacks jurisdiction to
6 do anything about it.” Commercial Space Mgmt. Co., Inc., 193 F.3d at 1078. As Plaintiff has
7 not served a responsive pleading to Defendant’s counterclaim and Third-Party Defendants Fred
8 Whitten and Daniel Madriaga have not filed a responsive pleading to Defendant’s third-party
9 claims, Defendant’s counterclaim and third-party claims have been voluntarily dismissed by
10 Defendant with prejudice and without an award of costs or attorneys’ fees pursuant to Rule 41(c)
11 and 41(a)(1)(A)(i).

12 In light of the stipulation of the parties, Plaintiff’s claims have been terminated, Fed. R.
13 Civ. P. 41(a)(1)(A)(ii); Wilson, 111 F.3d at 692, and have been dismissed with prejudice and
14 without an award of costs or attorneys’ fees.

15 Accordingly, the Clerk of the Court is HEREBY ORDERED to CLOSE the file in this
16 case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a). It
17 is FURTHER ORDERED that all pending dates and matters in this action are VACATED.

18 IT IS SO ORDERED.

19 Dated: August 16, 2017

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22 UNITED STATES MAGISTRATE JUDGE
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