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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GABRIELA OJEDA,  
Plaintiff,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, et al.,  
Defendants.

Case No. 1:17-cv-00433-DAD-SAB

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

(ECF No. 14)

This action was filed on March 24, 2017. (ECF No. 1.) On August 15, 2017, Plaintiff filed a motion to dismiss this action without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. (ECF No. 14.)

“[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. Here, Defendants have filed a motion to dismiss, but the Ninth Circuit has held  
2 that a pending motion to dismiss is not equivalent to an answer or motion for summary  
3 judgment. Miller v. Reddin, 422 F.2d 1264, 1266 (9th Cir. 1970).

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

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8 IT IS SO ORDERED.

9 Dated: August 16, 2017

  
UNITED STATES MAGISTRATE JUDGE

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