UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSE ACOSTA,

       Plaintiff,

    v.

BILLINGSLEYS' MAIN STREET GRILL, INC., et al.,

       Defendants.

Case No. 1:17-cv-01084-AWI-SAB

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

ORDER VACATING ALL PENDING DATES AND MATTERS

(ECF No. 7)

This action was filed on August 11, 2017. (ECF No. 1.) On October 16, 2017, Plaintiff filed a notice of voluntary dismissal with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. (ECF No. 7.)

"[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. In this action, no defendant has filed an answer or motion for summary judgment.

2   Accordingly, the Clerk of the Court is HEREBY ORDERED to CLOSE the file in this

3 case and adjust the docket to reflect voluntary dismissal with prejudice of this action pursuant to

4 Rule 41(a). It is FURTHER ORDERED that all pending dates and matters in this action are

5 VACATED.

6

7 IT IS SO ORDERED.

8 Dated: __**October 17, 2017**__   _____

UNITED STATES MAGISTRATE JUDGE