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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SILVIA ARIAS,

Plaintiff,

v.

SELECT PORTFOLIO SERVICING, INC., et
al.,

Defendants.

Case No. 1:17-cv-01130-DAD-SAB

ORDER DIRECTING CLERK OF THE
COURT TO TERMINATE DEFENDANT
QUALITY LOAN SERVICE
CORPORATION AS A PARTY IN THIS
ACTION PURSUANT TO FED. R. CIV. P.
41(a), TERMINATING QUALITY LOAN
SERVICE CORPORATION’S MOTION TO
DISMISS, AND VACATING ALL
PENDING DATES AND MATTERS AS TO
QUALITY LOAN SERVICE
CORPORATION

(ECF No. 19)

On November 28, 2017, Plaintiff filed a notice of voluntary dismissal without prejudice as to Defendant Quality Loan Service Corporation only. (ECF No. 19.)

“[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 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

1 v. Chun, 987 F.2d 608, 609 (9th Cir. 1993).

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

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The Clerk of the Court is DIRECTED to terminate Defendant Quality Loan
10 Service Corporation as a party in this action;
- 11 2. Defendant Quality Loan Service Corporation’s motion to dismiss (ECF No. 12) is
12 terminated; and
- 13 3. All pending dates and matters in this action are vacated as to Defendant Quality
14 Loan Service Corporation only.

15 IT IS SO ORDERED.

16 Dated: November 29, 2017

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19 UNITED STATES MAGISTRATE JUDGE
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