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

THERESA BROOKE,  
Plaintiff,  
v.  
PRIME HOSPITALITY SERVICES LLC,  
Defendant.

Case No. 1:17-cv-01582-AWI-SAB  
ORDER DISREGARDING NOTICE OF  
VOLUNTARY DISMISSAL  
(ECF No. 5)  
FOURTEEN DAY DEADLINE

Plaintiff Theresa Brooke filed this action against Defendant Prime Hospitality Services, LLC on November 28, 2017. (ECF No. 1.) On January 5, 2018, Defendant filed an answer to the complaint. (ECF No. 4.) On February 13, 2018, Plaintiff filed a notice of voluntary dismissal dismissing the action with prejudice with each party to bear its own costs and attorney fees. (ECF No. 5.)

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘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)). Here, Defendant has filed an answer, so Plaintiff cannot voluntarily dismiss this action pursuant to Rule 41(a)(1)(A)(i).

Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an

1 action without a court order by filing a stipulation of dismissal signed by all parties who have  
2 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

3 A party may also dismiss an action by filing a motion requesting the Court to dismiss the  
4 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is  
5 addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co.  
6 Inc., 679 F.2d 143, 145 (9th Cir. 1982).

7 Plaintiff’s notice of voluntary dismissal is defective under Rule 41(a) because it is not a  
8 signed stipulation by all parties who have appeared and it is not a motion under Rule 41(a)(2). If  
9 Plaintiff wishes to dismiss this action, she is required to comply with the procedures set forth in  
10 Rule 41 by filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under Rule  
11 41(a)(2).

12 Accordingly, Plaintiff’s notice of voluntary dismissal is **HEREBY DISREGARDED**.  
13 Plaintiff shall file a request for dismissal that complies with Rule 41 within fourteen (14) days  
14 from the date of entry of this order.

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16 IT IS SO ORDERED.

17 Dated: **February 14, 2018**

  
UNITED STATES MAGISTRATE JUDGE

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