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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 CITY OF FRESNO,

11 Plaintiff,

12 v.

13 TOKIO MARINE SPECIALTY
14 INSURANCE COMPANY,

15 Defendant.

Case No. 1:18-cv-00504-LJO-SAB

ORDER DISREGARDING NOTICE OF
VOLUNTARY DISMISSAL

(ECF No. 25)

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17 On April 12, 2018, Defendant Tokio Marine Specialty Insurance Company removed this
18 action from Fresno County Superior Court to the Eastern District. (ECF No. 1.) An answer was
19 filed on August 15, 2018, following the denial of Defendant’s motion to dismiss. (ECF Nos. 11,
20 12.) On December 23, 2019, Plaintiff City of Fresno filed a notice of voluntary dismissal of the
21 action. (EC No. 25.)

22 Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an
23 absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a
24 motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193
25 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.
26 1997)). Here, Defendant has filed an answer, so Plaintiff cannot voluntarily dismiss this action
27 pursuant to Rule 41(a)(1)(A)(i).

28 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, Plaintiff is required to comply with the procedures set
10 forth in Rule 41 by filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under
11 Rule 41(a)(2).

12 Accordingly, Plaintiff’s notice of voluntary dismissal is HEREBY DISREGARDED.

13 IT IS SO ORDERED.

14 Dated: December 26, 2019

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17 UNITED STATES MAGISTRATE JUDGE
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