

1 prejudice. (Id.)

2 Subsequently, on January 13, 2014, plaintiff filed a motion to dismiss her claims against
3 Bank of America and Bank of New York without prejudice. (ECF No. 26.) Plaintiff requests
4 dismissal pursuant to Federal Rule of Civil Procedure 12(b)(2), which concerns lack of personal
5 jurisdiction and does not appear to be applicable in this case. Nevertheless, in light of plaintiff's
6 *pro se* status and her stated desire to dismiss her claims against the only remaining defendants, the
7 court instead liberally construes plaintiff's motion as a notice of voluntary dismissal of the case
8 without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

9 Federal Rule of Civil Procedure 41(a)(1)(A) provides that "the plaintiff may dismiss an
10 action without a court order by filing . . . (i) a notice of dismissal before the opposing party serves
11 either an answer or a motion for summary judgment . . ." "Under Rule 41(a)(1), a plaintiff has
12 an absolute right voluntarily to dismiss his action prior to service by the defendant of an answer
13 or a motion for summary judgment. Even if the defendant has filed a motion to dismiss, the
14 plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1).
15 The dismissal is effective on filing and no court order is required...Unless otherwise stated, the
16 dismissal is ordinarily without prejudice to the plaintiff's right to commence another action for
17 the same cause against the same defendants." Concha v. London, 62 F.3d 1493, 1506 (9th Cir.
18 1995); see also United States v. Real Property Located at 475 Martin Lane, Beverly Hills, CA,
19 545 F.3d 1134, 1145 (9th Cir. 2008) (noting that dismissal under Rule 41(a)(1)(A)(i) requires no
20 action on the part of the court and divests the court of jurisdiction once the notice of voluntary
21 dismissal is filed).

22 Here, because remaining defendants Bank of America and Bank of New York have not
23 yet served an answer or a motion for summary judgment in this case, plaintiff's request for
24 dismissal is effective without a court order.

25 Nevertheless, for purposes of clarity, IT IS HEREBY ORDERED that:

- 26 1. The action is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil
27 Procedure 41(a)(1)(A)(i).

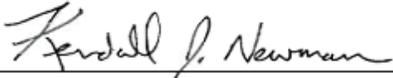
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2. The Clerk of Court is directed to close this case and vacate all dates.

IT IS SO ORDERED.

Dated: January 15, 2014


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE