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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERICH KAISER,  
Plaintiff,  
v.  
FLAGSTAR BANK, FSB,  
Defendant.

No. 2:13-cv-2352-MCE-KJN PS

ORDER

On May 1, 2014, plaintiff filed a motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2), indicating that plaintiff voluntarily dismisses without prejudice all claims brought in this action. (ECF No. 26.) Because defendant Flagstar Bank, FSB has not yet served an answer or a motion for summary judgment in this action, the court instead construes plaintiff’s filing as a notice of voluntary dismissal of this case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

Federal Rule of Civil Procedure 41(a)(1)(A) provides that “the plaintiff may dismiss an action without a court order by filing . . . (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” Fed. R. Civ. P. 41(a)(1)(A)(i). “Under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal

1 under Rule 41(a)(1). The dismissal is effective on filing and no court order is required.” Concha  
2 v. London, 62 F.3d 1493, 1506 (9th Cir. 1995); see also United States v. Real Property Located at  
3 475 Martin Lane, Beverly Hills, CA, 545 F.3d 1134, 1145 (9th Cir. 2008) (noting that dismissal  
4 under Rule 41(a)(1)(A)(i) requires no action on the part of the court and divests the court of  
5 jurisdiction once the notice of voluntary dismissal is filed).

6 Because defendant Flagstar Bank, FSB has not yet served an answer or motion for  
7 summary judgment in this case, plaintiff’s request for dismissal is effective without a court order.  
8 Nevertheless, for purposes of clarity only, IT IS HEREBY ORDERED that:

9 1. Plaintiff’s motion for voluntary dismissal (ECF No. 26) is granted.


10 2. The action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure  
11 41(a)(1)(A)(i).

12 3. The pending motion to dismiss (ECF No. 19) is denied without prejudice as moot, and  
13 the May 22, 2014 hearing on that motion is vacated.

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

15 IT IS SO ORDERED.

16 Dated: May 5, 2014

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19 KENDALL J. NEWMAN  
20 UNITED STATES MAGISTRATE JUDGE  
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