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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR ROSSETTI,
Plaintiff,

v.

T65 HEALPLANS OF BOCA RATON,
FL, et al.,

Defendants.

No. 2:22-cv-00955-TLN-CKD (PS)
ORDER

This civil action, in which plaintiff proceeds pro se, was removed to federal court on June 2, 2022. (ECF No. 1.) Plaintiff alleged a violation of the federal Telephone Consumer Protection Act (“TCPA”). Defendants filed a motion to dismiss, which is fully briefed. (ECF Nos. 6, 8, 9.) On July 5, 2022, plaintiff filed a “rebuttal” to the motion to dismiss, stating in part: “Plaintiff, however, wishes to dismiss this case without prejudice and proceed in California Superior Court, where it should have remained all along, but this time under California’s do not call statutes.” (ECF No. 10.)

The court 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” “Under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to

1 dismiss his action prior to service by the defendant of an answer or a motion for summary
2 judgment. Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his
3 action voluntarily by filing a notice of dismissal under Rule 41(a)(1). The dismissal is effective
4 on filing and no court order is required...Unless otherwise stated, the dismissal is ordinarily
5 without prejudice to the plaintiff's right to commence another action for the same cause against
6 the same defendants." Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995); see also United
7 States v. Real Property Located at 475 Martin Lane, Beverly Hills, CA, 545 F.3d 1134, 1145 (9th
8 Cir. 2008) (noting that dismissal under Rule 41(a)(1)(A)(i) requires no action on the part of the
9 court and divests the court of jurisdiction once the notice of voluntary dismissal is filed).

10 Because defendants have not yet served an answer or motion for summary judgment in
11 this case, plaintiff's request for dismissal is effective without a court order. Accordingly, for
12 purposes of clarity, IT IS HEREBY ORDERED that:

- 13 1. The action is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil
14 Procedure 41(a)(1)(A)(i);
- 15 2. The pending motion to dismiss (ECF No. 6) is DENIED AS MOOT; and
- 16 3. The Clerk of Court is directed to CLOSE this case and vacate all dates.

17 Dated: August 1, 2022

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20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE
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