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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 | PEDRO BRAMBILA, et al., No. C11-4485 EMC

9 Plaintiffs,

ORDER DISMISSING ACTION

10 v.

11 DEUTSCHE BANK, et al.,

12 Defendants.

15 Plaintiffs Pedro and Ricardo Brambila filed suit against Deutsche Bank and Stephanie
16 Fordham following the foreclosure of their home. They allege causes of action for violations of the
17 FDCPA and § 1983, Compl. ¶¶ 70-128, wrongful foreclosure and quiet title, Compl. ¶¶ 129-36, and
18 slander of title and fraudulent inducement, Compl. ¶¶ 137-41. Both Defendants filed motions to
19 dismiss. Docket Nos. 3, 10. Plaintiffs filed no opposition, but instead filed a motion for voluntary
20 dismissal without prejudice. Docket No. 19. Plaintiffs request a voluntary dismissal by Court order
21 under Rule 41(a)(2), which provides that a Court may order voluntary dismissal “on terms that the
22 court considers proper. . . . Unless the order states otherwise, a dismissal under this paragraph (2) is
23 without prejudice.”

24 However, while pro se Plaintiffs filed their motion under 41(a)(2), they actually have a right
25 under 41(a)(1) to dismiss the action voluntarily without prejudice. “It is well settled that under Rule
26 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the
27 defendant of an answer or a motion for summary judgment.” *Commercial Space Mgmt. Co. v.*
28 *Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir.1999) (internal citations and quotation marks omitted).

1 Under 41(a)(1), a plaintiff may voluntarily dismiss an action and “automatically terminate[] the
2 action as to the defendants who are the subjects of the notice.” Accordingly, the Court construes
3 Plaintiffs’ filing as a notice of voluntary dismissal pursuant to Rule 41(a)(1) and instructs the Clerk
4 to close the file.¹

5 This Order disposes of Docket Nos. 3, 10, and 19. The hearing set for December 2, 2011, is
6 hereby VACATED.

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8 IT IS SO ORDERED.

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10 Dated: December 1, 2011

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13 EDWARD M. CHEN
14 United States District Judge

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25 The Ninth Circuit in *Commercial Space* made clear that ordinarily, the Court is divested of
26 jurisdiction to enter further orders confirming a notice of voluntary dismissal under Rule
27 41(a)(1). 193 F.3d at 1077 & n.4. However, in this case, due to pro se Plaintiffs’ error, the
28 Court determines that a clarifying order was necessary before terminating the action.