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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PEDRO BRAMBILA, et al.,

No. C11-4485 EMC

Plaintiffs,

**ORDER DISMISSING ACTION**

v.

DEUTSCHE BANK, et al.,

Defendants.

\_\_\_\_\_ /

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

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

**United States District Court**  
For the Northern District of California

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.<sup>1</sup>

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  
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.