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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION

5 JOSE DUARTE, et al.,
6 Plaintiffs,

7 vs.

8 ALEJANDRO MAYORKAS, et al.,
9 Defendants.

Case No: C 12-03647 SBA

ORDER

Docket 85, 86

10
11 On September 6, 2013, pro se Plaintiff Jose Duarte filed a motion to dismiss "his
12 cause of action" under Rule 41(a) of the Federal Rules of Civil Procedure. Dkt. 85. Under
13 Rule 41(a), a plaintiff may dismiss an action without a court order by filing "a notice of
14 dismissal before the opposing party serves either an answer or a motion for summary
15 judgment." Fed.R.Civ.P. 41(a)(1)(A)(i); see Wilson v. City of San Jose, 111 F.3d 688, 692
16 (9th Cir. 1997) ("Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily
17 dismiss his action prior to service by the defendant of an answer or a motion for summary
18 judgment.").

19 Here, because no Defendant has filed an answer or motion for summary judgment,
20 the Court construes Jose Duarte's motion as a notice of voluntary dismissal under Rule
21 41(a)(1)(A)(i). Accordingly, Jose Duarte's claims against Defendants are DISMISSED
22 without prejudice. This Order terminates Docket 85 and Docket 86.

23 IT IS SO ORDERED.

24 Dated: 10/28/2013

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26 SAUNDRA BROWN ARMSTRONG
27 United States District Judge
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