

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 RAYMOND PACELLO, JR.,
12 Plaintiff,
13 v.
14 CHILD WELFARE SERVICES, et al.,
15 Defendants.

Case No.: 17-CV-2083 JLS (BGS)

**ORDER DENYING AS MOOT
MOTION TO DISMISS**

(ECF No. 14)


16
17 Plaintiff has filed a Complaint against various Defendants, including the “Office of
18 the City Attorney San Diego.” (*See* ECF No. 1). The City of San Diego (stating it was
19 “erroneously named as ‘Office of the City Attorney San Diego’”) filed a Motion to Dismiss
20 the Complaint against it. (ECF No. 14.) Plaintiff then filed a Notice of Voluntary
21 Dismissal of two Defendants, one of which being the “Office of the City Attorney-San
22 Diego.” (ECF No. 15.)

23 Pursuant to Federal Rule of Civil Procedure 41, a plaintiff may dismiss an action
24 without a court order by filing “a notice of dismissal before the opposing party serves either
25 an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Here, the
26 Office of the City Attorney (i.e., the City of San Diego) has not filed an answer or a motion
27 for summary judgment but has filed a motion to dismiss. Because Plaintiff has filed a
28 Notice of Voluntary Dismissal for this Defendant, the Court cannot adjudicate the claims

1 on the merits. *See Duke Energy Trading and Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1049
2 (9th Cir. 2001) (“Once the notice of dismissal has been filed, the district court loses
3 jurisdiction over the dismissed claims and may not address the merits of such claims or
4 issue further orders pertaining to them.”). The Court therefore **DENIES AS MOOT** the
5 City of San Diego’s Motion to Dismiss, (ECF No. 14).

6 **IT IS SO ORDERED.**

7 Dated: February 26, 2018


8 Hon. Janis L. Sammartino
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28