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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON

5
6 SUSAN EMBREE,

7 Plaintiff,

8 v.

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10 OCWEN MORTGAGE SERVICING, INC.,
11 and OCWEN LOAN SERVICING, LLC,

12 Defendant.

NO. 2:17-CV-00156-JLQ

ORDER RE: NOTICE OF
VOLUNTARY DISMISSAL;
NOTICE STRIKING DEFENDANTS'
MOTION TO DISMISS; AND
DIRECTING ENTRY OF
JUDGMENT

13 On July 18, 2017, a Motion to Dismiss (ECF No. 14) was filed on behalf of both
14 named Defendants. On August 7, 2017, Plaintiff filed a Notice of Voluntary Dismissal of
15 Defendant Ocwen Mortgage Servicing, Inc. (ECF No. 18) and thereafter filed an
16 Amended Complaint naming Ocwen Loan Servicing, LLC, only as Defendant (ECF No.
17 19). On August 22, 2017, Defendant Ocwen Loan Servicing, LLC, filed a Notice Striking
18 Defendants' Motion to Dismiss (ECF No. 22) and thereafter filed a Motion to Dismiss
19 (ECF No. 23) the Amended Complaint.

20 “[T]he plaintiff may dismiss an action without a court order by filing ... a notice of
21 dismissal before the opposing party serves either an answer or a motion for summary
22 judgment.” Fed.R.Civ.P. 41(a)(1)(A). Unless stated otherwise in the notice of dismissal,
23 voluntary dismissal under Fed.R.Civ.P. 41(a)(1)(A) is without prejudice. Fed.R.Civ.P.
24 41(a)(1)(B). While Ocwen Mortgage Servicing, Inc. filed a Motion to Dismiss, it has not
25 filed a responsive pleading to the claims against it. *See* Fed.R.Civ.P. 7(a) (listing
26 responsive pleadings); Fed.R.Civ.P. 15 Advisory Committee Notes to the 2009
27 Amendments (“Serving a motion attacking the pleading ... is not a ‘pleading’ as defined
28 in Rule 7”). Accordingly, Plaintiff may voluntarily dismiss claims against Ocwen

1 Mortgage Servicing, Inc.

2 **IT IS HEREBY ORDERED:**

- 3 1. The Clerk is directed to enter Judgment dismissing the Complaint and the
4 claims therein against Defendant Ocwen Mortgage Servicing, Inc.
5 **WITHOUT PREJUDICE** and without costs or attorneys' fees to any party.
6 2. Ocwen Mortgage Servicing, Inc., shall be removed from the caption.
7 3. The Motion to Dismiss (ECF No. 14) is **STRICKEN**.

8 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and
9 Judgment, and furnish copies to counsel.

10 Dated August 23, 2017.

11 s/ Justin L. Quackenbush
12 JUSTIN L. QUACKENBUSH
13 SENIOR UNITED STATES DISTRICT JUDGE
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