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5 **IN THE UNITED STATES DISTRICT COURT FOR THE**
6 **EASTERN DISTRICT OF CALIFORNIA**

7 GORDON C. BOWMAN, on behalf of)
8 himself and all others similarly situated,)

9 Plaintiff,)

10 v.)

11 MORTGAGETREE LENDING, INC.,)
12 et al.,)

13 Defendants.)
14

NO. 1:08-CV-00119-AWI DLB

ORDER CLOSING THE CASE
DUE TO VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE

15 On May 14, 2010, Plaintiff filed a request for dismissal of this case without prejudice.

16 This notice is made pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

17 In Wilson v. City of San Jose, the Ninth Circuit explained:

18 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his
19 action prior to service by the defendant of an answer or a motion for summary
20 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
21 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
22 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
23 dismissal prior to the defendant's service of an answer or motion for summary
24 judgment. The dismissal is effective on filing and no court order is required. Id.
25 The plaintiff may dismiss some or all of the defendants, or some or all of his
26 claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-
27 10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court
28 automatically terminates the action as to the defendants who are the subjects of
the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is
ordinarily without prejudice to the plaintiff's right to commence another action for
the same cause against the same defendants. Id. (citing McKenzie v. Davenport-
Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal
leaves the parties as though no action had been brought. Id.

1 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997).

2 No answers to Plaintiff's complaint and no motions for summary judgment have been
3 filed in this case and it appears that no such answers or summary judgment motions have been
4 served. Because Plaintiff has exercised his right to voluntarily dismiss the complaint under Rule
5 41(a)(1), this case has terminated. See Wilson, 111 F.3d at 692.

7 Therefore, IT IS HEREBY ORDERED that the Clerk is ordered to close this case in light
8 of Plaintiff's Rule 41(a)(1)(i) requested dismissal without prejudice.

9
10 IT IS SO ORDERED.

11 **Dated:** May 17, 2010

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE