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

7 JESUS R. HERNANDEZ,) NO. 1:09-CV-01225 AWI SMS
8)
9 Plaintiff,) ORDER CLOSING THE CASE
10 v.) DUE TO VOLUNTARY
11 WELLS FARGO BANK, N.A., et al.,) DISMISSAL WITHOUT
12 Defendants.) PREJUDICE
13

14 On May 3, 2010, Plaintiff filed a request for dismissal of this case without prejudice.
15 This notice is made pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

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

17 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his
18 action prior to service by the defendant of an answer or a motion for summary
19 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
20 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
21 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
22 dismissal prior to the defendant's service of an answer or motion for summary
23 judgment. The dismissal is effective on filing and no court order is required. Id.
24 The plaintiff may dismiss some or all of the defendants, or some or all of his
25 claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-
26 10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court
27 automatically terminates the action as to the defendants who are the subjects of
28 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.

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

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

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

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9 IT IS SO ORDERED.

10 **Dated: May 4, 2010**

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