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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ALEX MACHADO,

1:10-cv-00434-AWI-GSA-PC

Plaintiff,

ORDER GRANTING MOTION TO DISMISS  
PURSUANT TO RULE 41  
(Doc. 45.)

v.

KELLY HARRINGTON, et al.,

ORDER DISMISSING ACTION IN ITS  
ENTIRETY WITHOUT PREJUDICE

Defendants.

ORDER DIRECTING CLERK TO CLOSE FILE

Plaintiff Alex Machado (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint on May 11, 2010. (Doc. 1.) On June 13, 2011, plaintiff filed a [motion to voluntarily dismiss](#) the complaint, with intentions to exhaust administrative remedies and file a class action suit. (Doc. 45.)

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

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant’s service of an answer or motion for summary judgment. The dismissal is effective on filing and no court order is required. Id. The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-

1 10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court  
2 automatically terminates the action as to the defendants who are the subjects of  
3 the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is  
4 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.

5 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No defendant has filed an answer  
6 or motion for summary judgment in this action. Therefore, plaintiff's motion shall be granted.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motion to voluntarily dismiss the complaint, filed on June 13, 2011, is  
9 GRANTED;
- 10 2. This action is DISMISSED in its entirety without prejudice; and
- 11 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the  
12 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

13 IT IS SO ORDERED.

14 Dated: June 15, 2011

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17 CHIEF UNITED STATES DISTRICT JUDGE  
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