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

WILLIAM DOUGLAS MELLO,

1:10-cv-00828-LJO-GSA-PC

Plaintiff,

ORDER GRANTING MOTION TO DISMISS  
PURSUANT TO RULE 41  
(Doc. 10.)

v.

F. AGUIAR, et al.,

ORDER DISMISSING ACTION IN ITS  
ENTIRETY WITHOUT PREJUDICE

Defendants.

ORDER DIRECTING CLERK TO CLOSE FILE

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**I. BACKGROUND**

William Douglas Mello (“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 commencing this action on May 12, 2010. (Doc. 1.) On July 6, 2010, Plaintiff filed an amended complaint. (Doc. 9.) On July 26, 2012, the Court issued an order dismissing the amended complaint, for failure to state a claim, with leave to amend. (Doc. 15.)

On August 13, 2012, Plaintiff filed a motion to voluntarily dismiss this action. (Doc. 16.)

**II. RULE 41 DISMISSAL OF ACTION**

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

1 v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A  
2 plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal  
3 prior to the defendant's service of an answer or motion for summary judgment. The  
4 dismissal is effective on filing and no court order is required. Id. The plaintiff may  
5 dismiss some or all of the defendants, or some or all of his claims, through a Rule  
6 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-10 (9th Cir. 1993). The  
7 filing of a notice of voluntary dismissal with the court automatically terminates the  
8 action as to the defendants who are the subjects of the notice. Concha, 62 F.2d at  
9 1506. Unless otherwise stated, the dismissal is ordinarily without prejudice to the  
10 plaintiff's right to commence another action for the same cause against the same  
11 defendants. Id. (citing McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930,  
12 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had  
13 been brought. Id.

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

16 **IV. CONCLUSION**

17 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion to voluntarily dismiss the complaint is GRANTED;
- 19 2. This action is DISMISSED in its entirety without prejudice; and
- 20 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the  
21 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

22 IT IS SO ORDERED.

23 **Dated:** August 14, 2012

24 /s/ Lawrence J. O'Neill  
25 UNITED STATES DISTRICT JUDGE