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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE GARCIA,
Plaintiff,
v.
MARTINEZ, et al.,
Defendants.

Case No. 1:13-cv-01389-LJO-JLT (PC)
**ORDER CLOSING THE CASE DUE
TO VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**
(Doc. 17)

On April 16, 2014, Plaintiff filed a request for dismissal of this case without prejudice. Although not stated in the notice, the Court construes it as one made pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

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, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court 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 filed
3 in this case. It appears that no such answers or motions for summary judgment have been served.
4 Because Plaintiff has exercised his right to voluntarily dismiss the complaint under Rule 41(a)(1),
5 this case has terminated. *See Wilson*, 111 F.3d at 692.

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: April 24, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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