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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **LANARD KITCHENS,**

9 **Plaintiffs,**

10 **v.**

11 **JOHN W. TYLAR JOSEPH MACHADO;**  
12 **KEITH FAGUNDES; JENNIFER**  
13 **GARCIA; STEPHEN GIRARDOT,**

14 **Defendants.**

**CASE NO. 1:14-CV-299 AWI GSA**

**ORDER CLOSING CASE IN LIGHT OF  
NOTICE OF VOLUNTARY DISMISSAL  
WITH PREJUDICE**

(Doc. No. 6)

15 On August 18, 2014, Plaintiff filed a motion for voluntary dismissal. See Doc. No. 6.  
16 Rule 41(a)(1), in relevant part, reads:

17 (A) . . . the plaintiff may dismiss an action without a court order by filing: (i) a  
18 notice of dismissal before the opposing party serves either an answer or a motion  
19 for summary judgment; or (ii) a stipulation of dismissal signed by all parties who  
20 have appeared. . . . (B) Unless the notice or stipulation states otherwise, the  
dismissal is without prejudice.

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

22 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his  
23 action prior to service by the defendant of an answer or a motion for summary  
24 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton  
25 v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A  
26 plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal  
27 prior to the defendant's service of an answer or motion for summary judgment.  
28 The dismissal is effective on filing and no court order is required. Id. . . . 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,

1 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had  
2 been brought. Id.

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

4 No answers to Plaintiff's complaint and no motions for summary judgment have been filed  
5 in this case and there is no indication on the record that any such answers or summary judgment  
6 motions have been served. Because Plaintiff has exercised his right to voluntarily dismiss his  
7 complaint under Rule 41(a)(1), this case has terminated. See Wilson, 111 F.3d at 692. Since  
8 Plaintiff did not specify whether or not he seeks a dismissal with or without prejudice, the  
9 dismissal is granted without prejudice. Id.

10 Accordingly, IT IS HEREBY ORDERED that the Clerk shall CLOSE this case in light of  
11 Plaintiff's Rule 41(a)(1) voluntary dismissal without prejudice.

13 IT IS SO ORDERED.

14 Dated: August 25, 2014

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17 SENIOR DISTRICT JUDGE