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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 DAVID HARRING,

9 Plaintiff

10 v.

11 CHRISTOPHER MARTENS,

12 Defendant
13

CASE NO. 1:14-CV-310 AWI BAM

ORDER CLOSING CASE IN LIGHT OF
NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE

(Doc. No. 14)

14 On September 19, 2014, Plaintiff filed a notice of voluntary dismissal without prejudice.
15 See Doc. No. 14.
16

17 Rule 41(a)(1), in relevant part, reads:

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

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

24 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his
25 action prior to service by the defendant of an answer or a motion for summary
26 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton
27 v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A
28 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
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

1 defendants. Id. (citing McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930,
2 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had
3 been brought. Id.

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

5 No answers to Plaintiff's complaint and no motions for summary judgment have been
6 filed, nor does it appear that no such answers or summary judgment motions have been served.
7 Because Plaintiff has exercised his right to voluntarily dismiss his complaint without prejudice
8 under Rule 41(a)(1), this case has terminated. See Wilson, 111 F.3d at 692.

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

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12 IT IS SO ORDERED.

13 Dated: September 23, 2014

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SENIOR DISTRICT JUDGE