

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**NATIVIDAD GUTIERREZ,**  
**Plaintiff**

V.

**TIMOTHY PETER HAMBLET, et al.,**  
**Defendants**

**CASE NO. 1:15-CV-194 AWI SAB**

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

(Doc. No. 16)

On May 1, 2015, Plaintiff filed a notice of voluntary dismissal with prejudice. See Doc.

No. 11.

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

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

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 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 it appears that no such answers or summary judgment motions have been served.  
6 Because Plaintiff has exercised his right to voluntarily dismiss his complaint with prejudice under  
7 Rule 41(a)(1), this case has terminated. See Wilson, 111 F.3d at 692.

8 Accordingly, IT IS HEREBY ORDERED that the Clerk shall CLOSE this case in light of  
9 Plaintiff's Rule 41(a)(1) voluntary dismissal with prejudice.

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11 IT IS SO ORDERED.

12 Dated: May 5, 2015

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14 SENIOR DISTRICT JUDGE

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