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6 **UNITED STATES DISTRICT COURT**

7 **EASTERN DISTRICT OF CALIFORNIA**

8
9 MICHAEL GRAVES,

10 Plaintiff,

11 v.

12 SUPERVISING DEPUTY, INYO
13 COUNTY PUBLIC DEFENDER,

14 Defendant.

Case No. 1:15-cv-00548-LJO-JLT (PC)

**ORDER CLOSING THE CASE DUE TO
VOLUNTARY DISMISSAL WITHOUT
PREJUDICE**

(Doc. 4, 12, 14)

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16 On May 28, 2015, Plaintiff filed a notice of withdrawal of his Complaint in this action and
17 requested dismissal of this case without prejudice. (Doc. 14.) Although not stated in the notice,
18 the Court construes it as one made pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

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

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

1 (citing *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934-35
2 (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 Neither answers to Plaintiff's Complaint, nor motions for summary judgment have been
6 filed in this case and it appears that no such answers or summary judgment motions have been
7 served. Since Plaintiff has exercised his right to voluntarily dismiss the complaint under Rule
8 41(a)(1), this case has terminated. *See Wilson*, 111 F.3d at 692.

9 Therefore, IT IS HEREBY ORDERED that the Clerk is ordered to close this case in light
10 of Plaintiff's Rule 41(a)(1)(i) requested dismissal without prejudice and all pending motions
11 (Docs. 4, 12) are DISREGARDED as moot.

12 IT IS SO ORDERED.

13 Dated: June 1, 2015

14 /s/ Lawrence J. O'Neill
15 UNITED STATES DISTRICT JUDGE
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