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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 EUGENE TAYLOR,

8 Plaintiff,

9 vs.

10 CLIFF ALLENBY, et al.,

11 Defendants.

1:15-cv-00568-LJO-GSA-PC

ORDER RE PLAINTIFF'S NOTICE OF  
VOLUNTARY DISMISSAL UNDER  
RULE 41  
(Doc. 6.)

ORDER DIRECTING CLERK TO CLOSE  
FILE

12  
13 Eugene Taylor ("Plaintiff") is a civil detainee proceeding pro se in this civil rights action  
14 pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on October  
15 31, 2014, at the U.S. District Court for the Central District of California. (Doc. 3.) On March  
16 25, 2015, the case was transferred to the Eastern District of California. (Doc. 32.) This case  
17 now proceeds on the Second Amended Complaint filed by Plaintiff on March 24, 2015, against  
18 defendants Cliff Allenby, Audrey King, Tom Voss, Pam Ahlin, and Stephen Mayberg. (Doc.  
19 31.)

20 On April 29, 2015, Plaintiff filed a notice of withdrawal of the complaint. (Doc. 42.)  
21 The court construes Plaintiff's request as a notice of dismissal under Rule 41(a)(1). In Wilson  
22 v. City of San Jose, the Ninth Circuit explained:

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

1 with the court automatically terminates the action as to the defendants who are  
2 the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated,  
3 the dismissal is ordinarily without prejudice to the plaintiff's right to commence  
4 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.

5 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). In this case, no defendant has  
6 filed an answer or motion for summary judgment in this action. Therefore, Plaintiff's notice of  
7 dismissal is effective, and this case shall be closed.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's notice of dismissal is effective as of the date it was filed;
- 10 2. This action is DISMISSED in its entirety without prejudice; and
- 11 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the  
12 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

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14 IT IS SO ORDERED.

15 Dated: May 2, 2015

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