

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT McCARTHY,

Plaintiff

V.

**KYUNG-SUN CHOI, SUNGHEE CHOI,
both d/b/a Americas Best Value Inn, and
DOES 1 through 10 inclusive,**

Defendants

CASE NO. 1:15-CV-1161 AWI GSA

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

(Doc. No. 6)

On September 2, 2015, Plaintiff filed a notice of voluntary dismissal with prejudice. See

Doc. No. 8.

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

1 action as to the defendants who are the subjects of the notice. Concha, 62 F.2d at
2 1506.

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)(A)(i), 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: September 2, 2015

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14 SENIOR DISTRICT JUDGE

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