1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 MACK A. WEST, Jr., No. 1:16-cv-00046-DAD-JLT (PC) 12 Plaintiff. ORDER DISMISSING DEFENDANTS M. HERRERA AND GENNIAL 13 WITHOUT PREJUDICE ON v. PLAINTIFF'S VOLUNTARY 14 DISMISSAL, PER FED. R. CIV P. 41(a) HULBERT, et al., 15 Defendants. (Doc. 44) 16 **CLERK TO TERMINATE DEFENDANTS** M. HERRERA AND GENNIAL FROM 17 THIS CASE 18 On August 17, 2018, Plaintiff filed a notice of voluntary dismissal of Defendants M. 19 Herrera and Gennial without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(i). 20 (Doc. 44.) 21 In Wilson v. City of San Jose, the Ninth Circuit explained: 22 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his 23 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 24 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 25 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 26 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 27 with the court automatically terminates the action as to the defendants who are 28 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, 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had been brought. Id. Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). Neither Defendant M. Herrera or Gennial have been served, let alone filed answers to Plaintiff's Complaint. (See Docs. 38, 39.) Likewise neither has filed a motion for summary judgment and it appears that no such answers or summary judgment motions have been served. Since Plaintiff has exercised his right to voluntarily dismiss Defendants M. Herrera and Gennial under Rule 41(a)(1), they have been terminated from this action. The Clerk is ordered to terminate Defendants M. Herrera and Gennial from this action and to enter their termination on the docket. IT IS SO ORDERED. /s/ Jennifer L. Thurston Dated: **August 21, 2018** UNITED STATES MAGISTRATE JUDGE