1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 BRIAN C. APPLEGATE, Case No. 1:16-cv-00289-JLT (PC) 12 ORDER CLOSING THE CASE Plaintiff, (Doc. 18) 13 v. 14 SAID, et al., 15 Defendants. 16 17 On April 13, 2017, Plaintiff filed a notice of voluntary dismissal of this action. (Doc. 18.) 18 Although not stated in Plaintiff's request, the Court construes it as one made pursuant to Federal 19 Rule of Civil Procedure 41(a)(1)(i). 20 In Wilson v. City of San Jose, the Ninth Circuit explained: 21 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 22 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 23 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 24 summary judgment. The dismissal is effective on filing and no court order is 25 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 26 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 27 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 28

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). No answer or motion for summary judgment has been filed in this case. Because Plaintiff has exercised his right to voluntarily dismiss the complaint under Rule 41(a)(1), this case has terminated and the matter may be closed. See Wilson, 111 F.3d at 692. Therefore, the Clerk is directed to close this case in light of Plaintiff's Rule 41(a)(1)(i) requested dismissal without prejudice. IT IS SO ORDERED. /s/ Jennifer L. Thurston Dated: **April 17, 2017** UNITED STATES MAGISTRATE JUDGE