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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
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7 KENNETH R. CALIHAN,

8 Plaintiff,

9 vs.

10 C. KING,

11 Defendant.

1:16-cv-01597-LJO-GSA-PC

ORDER RE PLAINTIFF'S MOTION TO
VOLUNTARILY DISMISS UNDER
RULE 41
(ECF No. 17.)

ORDER DIRECTING CLERK TO CLOSE
FILE

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13 Kenneth R. Calihan ("Plaintiff") is a prisoner 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 24, 2016. (ECF No. 1.)

16 On January 30, 2017, Plaintiff filed a motion to voluntarily dismiss this case without
17 prejudice. (ECF No. 17.) The court construes Plaintiff's request as a notice of dismissal under
18 Rule 41(a)(1). In Wilson v. City of San Jose, the Ninth Circuit explained:

19 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily
20 dismiss his action prior to service by the defendant of an answer or a motion for
21 summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995)
22 (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534
23 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files
24 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
26 required. Id. The plaintiff may dismiss some or all of the defendants, or some
27 or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987
28 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. (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.

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

4 Accordingly, IT IS HEREBY ORDERED that:

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

9
10 IT IS SO ORDERED.

11 Dated: February 2, 2017

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