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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY ALTAMIRANO SERMENO,
Plaintiff,
v.
MONTEREY COUNTY SUPERIOR
COURT, et al.,
Defendants.

Case No. 1:17-cv-00036-AWI-JLT (PC)
**ORDER CLOSING CASE DUE TO
VOLUNTARY DISMISSAL WITHOUT
PREJUDICE AND DENYING MOTIONS AND
FINDINGS AND RECOMMENDATION AS MOOT**
(Doc. 26)

Plaintiff, Larry Altamirano Sermeno, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On July 31, 2017, Plaintiff filed a request for dismissal of this action. (Doc. 26) Although not stated in Plaintiff's request,¹ the Court construes it as one made pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

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 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 Plaintiff's notice states "I would like to request for (sic) a voluntary dismissal until further notice (sic) thank you and God bless." (Doc. 26.)

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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.*

Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997).

Neither answers to Plaintiff's Complaint, nor motions for summary judgment have been filed in this case; nor have any such answers or summary judgment motions been served since Plaintiff has not stated a cognizable claim for his pleading to be served on any of the defendants. Because Plaintiff has exercised his right to voluntarily dismiss the complaint under Rule 41(a)(1), this case has terminated. *See Wilson*, 111 F.3d at 692.

Therefore, IT IS HEREBY ORDERED that:

1. The Clerk is ordered to CLOSE this case in light of Plaintiff's Rule 41(a)(1)(i) requested dismissal without prejudice;
2. Plaintiff's motions to stay (Doc. Nos. 9, 25) is DENIED as moot; and
3. The Findings and Recommendation issued on May 26, 2017 (Doc. No. 24) are denied as moot.

IT IS SO ORDERED.

Dated: August 2, 2017



SENIOR DISTRICT JUDGE