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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JARROD JOSEPH MILLER,

12 Plaintiff,

13 vs.

14 CACY FRAZIER, et al.,

15 Defendants.
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1:17-cv-00288-GSA-PC

ORDER RE PLAINTIFF'S NOTICE OF
VOLUNTARY DISMISSAL UNDER
RULE 41
(ECF No. 10.)

ORDER DIRECTING CLERK TO CLOSE
FILE

21 Jarrod Joseph Miller ("Plaintiff") is a state prisoner proceeding pro se and in forma
22 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On March 1, 2017, Plaintiff
23 filed the Complaint commencing this action. (ECF No. 1.)

24 On March 13, 2017, Plaintiff consented to Magistrate Judge jurisdiction in this action
25 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 6.)
26 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
27 California, the undersigned shall conduct any and all proceedings in the case until such time as
28 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 On October 27, 2017, Plaintiff filed a request to voluntarily dismiss this case without
2 prejudice. (ECF No. 10.) The court construes Plaintiff's request as a notice of dismissal under
3 Rule 41(a)(1). In Wilson v. City of San Jose, the Ninth Circuit explained:

4 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily
5 dismiss his action prior to service by the defendant of an answer or a motion for
6 summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995)
7 (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534
8 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files
9 a notice of dismissal prior to the defendant's service of an answer or motion for
10 summary judgment. The dismissal is effective on filing and no court order is
11 required. Id. The plaintiff may dismiss some or all of the defendants, or some
12 or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987
13 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal
14 with the court automatically terminates the action as to the defendants who are
15 the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated,
16 the dismissal is ordinarily without prejudice to the plaintiff's right to commence
17 another action for the same cause against the same defendants. Id. (citing
18 McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir.
19 1987)). Such a dismissal leaves the parties as though no action had been
20 brought. Id.

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

24 Accordingly, IT IS HEREBY ORDERED that:

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

IT IS SO ORDERED.

Dated: October 31, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE