

1 (ECF No. 31.) Therein, Plaintiff notifies the court that he has no objections to the dismissal of
2 this case. The court construes Plaintiff's request as a notice of voluntary dismissal under Rule
3 41.

4 Plaintiff has a right to voluntarily dismiss this case under Rule 41 of the Federal Rules of
5 Civil Procedure. In Wilson v. City of San Jose, the Ninth Circuit explained:

6 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss
7 his action prior to service by the defendant of an answer or a motion for summary
8 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
9 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
10 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
11 dismissal prior to the defendant's service of an answer or motion for summary
12 judgment. The dismissal is effective on filing and no court order is required. Id.
13 The plaintiff may dismiss some or all of the defendants, or some or all of his
14 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 with the court
11 automatically terminates the action as to the defendants who are the subjects of
12 the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is
13 ordinarily without prejudice to the plaintiff's right to commence another action for
14 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.

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

18 Accordingly, IT IS HEREBY ORDERED that:

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

23
24 IT IS SO ORDERED.

25 Dated: August 30, 2018

/s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE