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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 CLIFTON RAY SHAFER,

12 Plaintiff,

13 vs.

14 VALLEY STATE PRISON  
15 INVESTIGATIVE SERVICES UNIT,  
et al.,

16 Defendants.  
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19  
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1:18-cv-00498-GSA-PC

ORDER RE PLAINTIFF'S NOTICE OF  
VOLUNTARY DISMISSAL UNDER  
RULE 41  
(ECF No. 4.)

ORDER DIRECTING CLERK TO CLOSE  
FILE

21 Clifton Ray Shafer ("Plaintiff") is a state prisoner proceeding *pro se* with this civil  
22 rights action pursuant to 42 U.S.C. § 1983. On April 12, 2018, Plaintiff filed the Complaint  
23 commencing this action. (ECF No. 1.)

24 On April 26, 2018, Plaintiff filed a notice of voluntary dismissal of this case. (ECF No.  
25 10.) Plaintiff has a right to voluntarily dismiss this case under Rule 41 of the Federal Rules of  
26 Civil Procedure. In Wilson v. City of San Jose, the Ninth Circuit explained:

27 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily  
28 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)

1 (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534  
2 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files  
3 a notice of dismissal prior to the defendant's service of an answer or motion for  
4 summary judgment. The dismissal is effective on filing and no court order is  
5 required. Id. The plaintiff may dismiss some or all of the defendants, or some  
6 or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987  
7 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.

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

11 Accordingly, IT IS HEREBY ORDERED that:

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

16  
17 IT IS SO ORDERED.

18 Dated: April 27, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE