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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 CARLOS MANUEL FLORES,

11 Plaintiff,

12 vs.

13 CORCORAN STATE PRISON, et al.,

14 Defendants.
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1:12-cv-00977-GSA-PC

ORDER FOR DEFENDANT MOON TO
RESPOND TO PLAINTIFF'S MOTION
TO DISMISS WITHIN TWENTY (20)
DAYS
(Doc. 23.)

16 Carlos Manuel Flores ("Plaintiff") is a state prisoner proceeding pro se and in forma
17 pauperis in this civil rights action pursuant to 42 U.S.C. §1983. Plaintiff filed the Complaint
18 commencing this action on June 18, 2012. (Doc. 1.) The parties have consented to Magistrate
19 Judge jurisdiction pursuant to 28 U.S.C. § 636(c). (Docs. 5, 15.) This case now proceeds with
20 the First Amended Complaint, filed by Plaintiff on September 17, 2012, against defendant Dr.
21 Moon, for failure to provide adequate medical care to Plaintiff, in violation of the Eighth
22 Amendment. (Doc. 7.)

23 On December 16, 2013, Plaintiff filed a motion to "dismiss this lawsuit and all litigation
24 involved in this complaint." (*Id.*) The court construes Plaintiff's motion as a motion to dismiss
25 under Rule 41(a)(1). In Wilson v. City of San Jose, the Ninth Circuit explained:

26 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily
27 dismiss his action prior to service by the defendant of an answer or a motion for
28 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

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

13 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). In this case, defendant Moon
14 filed an answer on January 11, 2013. (Doc. 11.) Therefore, before plaintiff can dismiss this
15 action, defendant Moon must consent in writing to the dismissal. Defendant Moon shall be
16 required to respond in writing to plaintiff's motion to dismiss.

17 Accordingly, **IT IS HEREBY ORDERED** that within twenty (20) days of the date of
18 service of this order, defendant Moon shall respond in writing to plaintiff's motion to dismiss,
19 indicating whether he consents to the dismissal of this action, or whether he has any reason to
20 oppose the dismissal.

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IT IS SO ORDERED.

Dated: December 17, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE