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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CARLOS MANUEL FLORES,

12 Plaintiff,

13 vs.

14 CORCORAN STATE PRISON, et al.,

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

ORDER GRANTING MOTION TO
DISMISS PURSUANT TO RULE 41
(Doc. 23.)

ORDER DISMISSING ACTION IN ITS
ENTIRETY WITHOUT PREJUDICE

ORDER DIRECTING CLERK TO CLOSE
FILE

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

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

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

18 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). In this case, defendant Moon,
19 the sole defendant, has consented in writing to the dismissal. (Doc. 25.) Therefore, Plaintiff's
20 motion to dismiss shall be granted, dismissing this action in its entirety.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's motion to dismiss, filed on December 16, 2013, is GRANTED;
- 23 2. This action is DISMISSED in its entirety without prejudice; and
- 24 3. The Clerk of the Court is DIRECTED to close the file in this case and adjust the
25 docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

26 IT IS SO ORDERED.

27 Dated: December 20, 2013

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