1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 EDWARD FURNACE, Case No. 1:16-cv-00420-NONE-BAM (PC) 12 Plaintiff. ORDER GRANTING PLAINTIFF'S UNOPPOSED REQUEST FOR VOLUNTARY 13 DISMISSAL OF ACTION WITHOUT v. **PREJUDICE** 14 VILLA. (ECF No. 68) 15 Defendant. ORDER VACATING WRIT OF HABEAS CORPUS AD TESTIFICANDUM 16 DIRECTING PRODUCTION OF INMATE EDWARD FURNACE, CDCR #H-33245 17 (ECF No. 66) 18 Plaintiff Edward Furnace ("Plaintiff") is a state prisoner proceeding pro se and in forma 19 pauperis in this civil rights action under 42 U.S.C. § 1983. This action proceeds on Plaintiff's 20 21 second amended complaint against Defendant Villa for excessive force in violation of the Eighth 22 Amendment. This action is currently set for a telephonic status conference on November 10, 2021 to discuss setting the relevant deadlines and a possible trial date. (ECF No. 65.) 23 24 On October 25, 2021, Plaintiff filed a "Motion to Dismiss Action," stipulating to dismissal of this action pursuant to Fed. R. Civ. P. 41(a)(1). (ECF No. 68.) The Court construed Plaintiff's 25 26 motion as a motion to dismiss pursuant to Rule 41(a)(2) and directed Defendant to file a response. (ECF No. 69.) On November 2, 2021, Defendant filed a statement of non-opposition to 27 28 Plaintiff's motion to dismiss case. (ECF No. 71.) 1

1	Pursuant to Federal Rule of Civil Procedure 41(a)(2), and in light of Defendant's
2	statement of non-opposition, the Court finds the terms of the dismissal proper. As the parties
3	have not specified whether the dismissal is with or without prejudice, the Court finds that a
4	dismissal without prejudice is appropriate. Fed. R. Civ. P. 41(a)(2).
5	Accordingly, IT IS HEREBY ORDERED as follows:
6	1. Plaintiff's motion to dismiss action, (ECF No. 68), is GRANTED;
7	2. This action is dismissed without prejudice;
8	3. The writ of habeas corpus ad testificandum directing the production of Edward Furnace,
9	CDCR #H-33245, issued on October 12, 2021, (ECF No. 66) is VACATED; and
10	4. The Clerk of the Court is directed to:
11	a. Serve a courtesy copy of this order by e-mail on the Litigation Coordinator at
12	Pelican Bay State Prison, and on the Litigation Coordinator of any other
13	institution(s) which require this information;
14	b. Terminate all pending motions, hearings, and deadlines;
15	c. Assign a District Judge to this case for the purpose of closing the case; and
16	d. Close this case.
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18	IT IS SO ORDERED.
19	Dated: November 3, 2021 /s/Barbara A. McAuliffe
20	UNITED STATES MAGISTRATE JUDGE
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