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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HERTA CARTAGENA,

Plaintiff,

v.

THOMAS R. SCHROEDER and  
THOMAS R. SCHROEDER AND  
DEBRA L. SCHROEDER, as Trustees of  
the Thomas R. Schroeder and Debra L.  
Schroeder Revocable Living Trust,

Defendants.

No. 1:16-cv-01728-DAD-BAM

ORDER DISMISSING CLAIMS WITH  
PREJUDICE

(Doc. No. 21)

On May 4, 2017, plaintiff Herta Cartagena filed a notice of settlement and a motion to dismiss this action with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. (Doc. No. 21.) Defendants Thomas R. Schroeder and Debra L. Schroeder had previously filed an answer in this case. (Doc. No. 7.) Accordingly, plaintiff may not voluntarily dismiss the action under Federal Rule of Civil Procedure 41(a)(1), but must instead file a motion for voluntary dismissal under Rule 41(a)(2) and has done so. Unlike a Rule 41(a)(1) notice of dismissal, a Rule 41(a)(2) motion requires court approval. *See* Fed. R. Civ. P. 41(a); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).

A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result. *Waller v. Fin. Corp.*

1 of Am., 828 F.2d 579, 583 (9th Cir. 1987); see also *Hamilton v. Firestone Tire & Rubber Co.*, 679  
2 F.2d 143, 145–46 (9th Cir. 1982). “Legal prejudice” means “prejudice to some legal interest,  
3 some legal claim, some legal argument.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97  
4 (9th Cir. 1996). A dismissal under Rule 41(a)(2) normally is without prejudice, as explicitly  
5 stated in that rule. However, a dismissal with prejudice so that claims cannot be reasserted in  
6 another federal suit strengthens the conclusion that the dismissal causes no legal prejudice and is  
7 not an abuse of discretion. See *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001). In this  
8 matter, defendants will suffer no discernable legal prejudice, and plaintiff furthermore requests  
9 that the dismissal be with prejudice.

10 The court therefore finds that dismissal of plaintiff’s claims against defendants with  
11 prejudice is appropriate. Accordingly, plaintiff’s motion to dismiss with prejudice pursuant to  
12 Rule 41(a)(2) (Doc. No. 21) is granted, plaintiff’s claims are dismissed with prejudice, and the  
13 Clerk of the Court is directed close this case.

14 IT IS SO ORDERED.

15 Dated: May 11, 2017

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18 UNITED STATES DISTRICT JUDGE  
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