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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EARLENE SMITH,
Plaintiff,
v.
GINA MENDOZA, et al.,
Defendants.

Case No. 1:17-cv-01058-LJO-SAB
ORDER REQUIRING DEFENDANTS
JOSE LOPEZ AND GINA MENDOZA TO
FILE A RESPONSE TO PLAINTIFF'S
REQUEST FOR DISMISSAL
(ECF No. 35)
FIVE DAY DEADLINE

Plaintiff Earlene Smith filed this action on August 8, 2017, against the State of California [California Department of Corrections and Rehabilitation] (hereafter "Defendant CDCR"). (ECF No. 1.) Defendant CDCR filed a motion to dismiss on September 29, 2017. (ECF No. 7.) The undersigned issued findings and recommendations recommending granting Defendant CDCR's motion to dismiss on October 24, 2017. (ECF No. 12.) An order adopting the findings and recommendations and granting Defendant CDCR's motion to dismiss was filed on November 29, 2017. (ECF No. 15.)

On March 9, 2018, Plaintiff filed a first amended complaint against Defendants Jose Lopez and Gina Mendoza. (ECF No. 20.) On June 22, 2018, Defendants Lopez and Mendoza filed an answer. (ECF No. 30.) On July 9, 2018, an amended answer was filed. (ECF No. 31.) On December 11, 2018, Plaintiff filed a request for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2). (ECF No. 35.)

1 Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an
2 absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a
3 motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193
4 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.
5 1997)). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an
6 action without a court order by filing a stipulation of dismissal signed by all parties who have
7 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

8 Under Rule 41(a)(2) of the Federal Rules of Civil Procedure, a party may dismiss an
9 action by filing a motion requesting the Court to dismiss the action. Fed. R. Civ. P. 41(a)(2). A
10 motion for voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the
11 district court. Hamilton v. Firestone Tire & Rubber Co. Inc., 679 F.2d 143, 145 (9th Cir. 1982).
12 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a
13 defendant can show that it will suffer some plain legal prejudice as a result.” Smith v. Lenches,
14 263 F.3d 972, 975 (9th Cir. 2001).

15 As Plaintiff has chosen to file a motion for dismissal under Rule 41(a)(2), rather than a
16 stipulation under Rule 41(a)(1), the Court shall require Defendants Lopez and Mendoza to
17 respond to the request for dismissal.

18 Accordingly, IT IS HEREBY ORDERED that Defendants Lopez and Mendoza shall file
19 a response to Plaintiff’s request for dismissal within five (5) days of the date of entry of this
20 order.

21 IT IS SO ORDERED.

22 Dated: December 12, 2018

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25 UNITED STATES MAGISTRATE JUDGE
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