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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 GRANTING PLAINTIFF'S
REQUEST FOR DISMISSAL,
DISMISSING ACTION WITH PREJUDICE,
AND DIRECTING CLERK OF THE
COURT TO CLOSE MATTER
(ECF No. 35)

Plaintiff Earlene Smith filed this action on August 8, 2017, against the State of California [California Department of Corrections and Rehabilitation] (“Defendant CDCR”). (ECF No. 1.) Defendant CDCR filed a motion to dismiss on September 29, 2017. (ECF No. 7.) The magistrate judge 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.) At the order of the Court, on December 12, 2018, Defendants Lopez

1 and Mendoza filed a response to the request for dismissal. (ECF No. 37.)

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

9 Plaintiff requests that this action be dismissed with prejudice with each side to bear its
10 own costs and fees. Defendants Lopez and Mendoza do not object to the request for dismissal.
11 Accordingly, the Court shall grant the request.

12 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff Earlene Smith’s
13 request for dismissal is GRANTED and this action is DISMISSED WITH PREJUDICE with the
14 parties to bear their own costs and fees. The Clerk of the Court is DIRECTED to close this
15 matter.

16
17 IT IS SO ORDERED.

18 Dated: December 13, 2018

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE