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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRYLYN MCCAIN,

Plaintiff,

No. 2:11-cv-01265 KJM KJN PS

v.

CALIFORNIA HIGHWAY PATROL,
et al.,

Defendants.

ORDER

Presently before the court is plaintiff’s motion for partial summary judgment against defendant California Highway Patrol (“CHP”), which plaintiff filed on November 16, 2011 (Dkt. No. 79).¹ The undersigned denies plaintiff’s motion without prejudice.

On August 4, 2011, the undersigned filed findings and recommendations that recommended that: (1) the CHP’s motion to dismiss plaintiff’s claims against it be granted, (2) all of plaintiff’s claims against the CHP be dismissed with prejudice, and (3) the CHP be dismissed from this action (Dkt. No. 38). The district judge assigned to this case has not yet resolved the findings and recommendations pertaining to plaintiff’s claims against the CHP. However, if the district judge adopts the findings and recommendations in full, plaintiff’s motion

¹ This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 for partial summary judgment would be rendered moot because all of plaintiff's claims against
2 the CHP would be dismissed with prejudice, and the CHP would no longer be a defendant in this
3 action. Accordingly, the undersigned denies plaintiff's motion for partial summary judgment
4 without prejudice, and plaintiff may re-file that motion after resolution of the pending findings
5 and recommendations if the CHP remains a defendant in this action.


6 For the foregoing reasons, IT IS HEREBY ORDERED that:

7 1. Plaintiff's motion for partial summary judgment against defendant
8 California Highway Patrol (Dkt. No. 79) is denied without prejudice.

9 2. The hearing on plaintiff's motion for partial summary judgment, which is
10 presently set for December 15, 2011, is vacated.

11 IT IS SO ORDERED.

12 DATED: November 17, 2011

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE
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