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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WENDY JONES,

Plaintiff,

v.

JACQUELINE JENNINGS, et al.,

Defendants.

No. 2:15-cv-02364-KJM-AC

ORDER

On April 19, 2016, the court granted in part and denied in part the motion to dismiss by Jacqueline Jennings and the County of Sacramento. ECF No. 16. The court denied the motion to dismiss plaintiff Wendy Jones's first claim under 42 U.S.C. § 1983. *Id.* at 5. The court granted the motion to dismiss the second, third, fourth, fifth, and sixth claims with leave to amend. *Id.* And the court granted the motion to dismiss the seventh claim without leave to amend and with prejudice. *Id.* Jones was allowed twenty-one days to file an amended complaint. *Id.* She did not file an amended complaint.

On May 19, 2016, the same defendants moved to dismiss claims two, three, and four and to dismiss the County of Sacramento. ECF No. 17. The motion was accompanied by the declaration of Jill Nathan, counsel for the defendants. Ms. Nathan explained she had contacted Zachary Reber, plaintiffs' counsel, and Mr. Reber had confirmed Jones would not file an amended complaint and would pursue only a claim under § 1983 against Jacqueline Jennings.

1 In light of this information, the defendants ask the court to dismiss Jones’s other claims for lack  
2 of prosecution under Federal Rule of Civil Procedure 41(b). Jones filed neither an opposition nor  
3 a statement of non-opposition.

4 “If the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil  
5 Procedure] or a court order, a defendant may move to dismiss the action or any claim against it.”  
6 Fed. R. Civ. P. 41(b). A district court’s decision to dismiss under this rule is informed by five  
7 considerations: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s  
8 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
9 favoring disposition of cases on their merits and (5) the availability of less drastic sanctions.”  
10 *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting *Henderson v. Duncan*, 779  
11 F.2d 1421, 1423 (9th Cir. 1986)).

12 Here, the court has already dismissed the claims the defendants ask it to finally  
13 dismiss, and Jones has elected not to pursue an amended complaint. She intends to pursue only  
14 her first claim, the claim the court did not dismiss. Dismissal as requested would therefore be in  
15 the public interest and would simplify management of this case’s docket. The first two factors  
16 favor dismissal. The third is essentially neutral; the court is aware of no prejudice, considering  
17 the claims in question have already been dismissed and plaintiff was given a chance to amend.  
18 The fourth factor may appear at first to weigh against dismissal, but the court has already reached  
19 the merits of the pleadings in question. Finally, in light of the time period allowed for  
20 amendment and Jones’s decision not to oppose the current motion, dismissal is far from a drastic  
21 resolution here.

22 In summary, of the five factors this court must consider, two favor dismissal, and  
23 three are neutral at least. In the interest of clarity and the expeditious resolution of this case, the  
24 motion is GRANTED. Jones may proceed on claim one under 42 U.S.C. § 1983.

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The hearing currently set for June 17, 2016 is VACATED, but the initial scheduling conference currently set for the same day will proceed as scheduled.

This order resolves ECF No. 17.

IT IS SO ORDERED.

DATED: June 7, 2016.

  
UNITED STATES DISTRICT JUDGE