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

PRINESSIA PEREZ,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

No. 2:21-CV-2028-KJM-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the Court are Defendant’s unopposed motion to dismiss, ECF No. 5, and request to vacate, ECF No. 9. Through these motions, Defendant argues that Plaintiff fails to state a claim upon which this court can grant relief and that the notice of removal should be “vacated” because Plaintiff voluntarily dismissed her state court action prior to removal to this Court.

State court records, which this Court may judicially notice, see Kasey v. Molybdenum Corp. of America, 336 F.2d 560, 563 (9th Cir. 1964), reflect that Plaintiff voluntarily dismissed the underlying state court action on October 14, 2021 – before Defendant filed its notice of removal on November 3, 2021. See ECF No. 9, pgs. 4-5. Because there was no state action to remove at the time the notice of removal was filed, the state court action having been voluntarily dismissed, the Court agrees with Defendant that the notice of removal filed on the Court’s docket no November 3, 2021, is a nullity.

1 The Court also agrees with Defendant that Plaintiff fails to state a claim. Here,
2 Plaintiff alleges that Defendant United States Postal Service (USPS) is liable because she never
3 received a federal stimulus check. See ECF No. 1. This claim is foreclosed by statute providing
4 that USPS is not liable for any claims arising out of the “loss, miscarriage, or negligent
5 transmission of letters or postal matter.” 28 U.S.C. § 2680(b).

6 Based on the foregoing, the undersigned recommends that Defendant’s unopposed
7 motion, ECF No. 5, and request, ECF No. 9, be granted and that this action be dismissed.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
10 after being served with these findings and recommendations, any party may file written objections
11 with the Court. Responses to objections shall be filed within 14 days after service of objections.
12 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
13 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 Dated: December 13, 2021



16 DENNIS M. COTA
17 UNITED STATES MAGISTRATE JUDGE
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