

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

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

CECILLE Q. PAED, et al.,

Plaintiffs,

No. C 15-01980 JSW

v.

WELLS FARGO BANK, N.A.,

Defendant.

**ORDER REGARDING REQUEST
TO DISMISS**

Now before the Court is the request by Plaintiff to voluntarily dismiss this case without prejudice pursuant to Federal Rule of Civil Procedure 41. The Court has considered the parties' papers relevant legal authority, and the record in this case.

Federal Rule of Civil Procedure 41 provides, in relevant part, that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "The Ninth Circuit has long held that the decision to grant a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the District Court." *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). In exercising its discretion, the Court "must consider whether the defendant will suffer some plain legal prejudice as a result of the dismissal." *Id.*

In light of the Court's Order on the motion to dismiss filed by Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), Wells Fargo urges that the dismissal be with prejudice on all of Plaintiffs' claims except the one under California Civil Code section 2923.5. The Court notes that the Order on the motion to dismiss left open the possibility of providing leave to amend

1 Plaintiffs' negligence claim. Moreover, depending upon whether Plaintiffs could allege claims
2 for violation of section 2923.5 or a negligence claim, they may be able to state a claim for
3 violation of California Business and Professions Code section 17200 as well. Therefore, the
4 Court finds that the dismissal of Plaintiffs' negligence claim and Section 17200 claim should be
5 without prejudice as well. Accordingly, Court HEREBY GRANTS Plaintiffs' request to
6 voluntarily dismiss this action. However, based on the Court's Order on the motion to dismiss,
7 the Court dismisses Plaintiffs' claim pursuant to California Civil Code section 2923.55 and their
8 claim for breach of the implied covenant of good faith and fair dealing with prejudice. The
9 remainder of Plaintiffs' claims are dismissed without prejudice.

10 **IT IS SO ORDERED.**

11
12 Dated: July 22, 2015

13 
14 _____
15 JEFFREY S. WHITE
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28