

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
RACHEL TUDOR,)	
)	
Plaintiff-Intervenor)	
v.)	CASE NO. 5:15-cv-00324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA)	
)	
Defendants.)	

**PLAINTIFF UNITED STATES’ BRIEF IN SUPPORT OF STIPULATION AND
JOINT MOTION TO DISMISS UNITED STATES’ COMPLAINT**

For the reasons set forth herein, Plaintiff United States (“United States”) requests that the Court grant its Joint Motion to Dismiss the United States’ Complaint (ECF No. 164). Pursuant to Federal Rule of Civil Procedure 41(a)(2), the United States and Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma (collectively “Defendants”), have stipulated and jointly moved to dismiss with prejudice the Complaint of the United States (ECF No. 1) in this case due to a settlement between the United States and Defendants. Plaintiff-Intervenor Dr. Rachel Tudor (“Dr. Tudor”), who is not a party to the settlement and whose Complaint-in-Intervention (ECF No. 24) is not reached by the proposed dismissal, declined to stipulate

to the dismissal of the United States' Complaint. As a result, voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) is unavailable and the United States and Defendants seek a voluntary dismissal with prejudice in connection with their settlement pursuant to Fed. R. Civ. P. 41(a)(2).

It is only in "rare circumstance[s] where dismissal with prejudice of a plaintiff's claims would adversely impact another party to the litigation," that a request for a dismissal with prejudice may be denied. *County of Santa Fe v. Pub. Serv. Co. of New Mexico*, 311 F.3d 1031, 1049 (10th Cir. 2002); *see also* 9 Wright & Miller, Fed. Prac. & Proc. Civ. § 2367 (3d ed.) ("If the plaintiff moves for an order under Rule 41(a)(2) for voluntary dismissal, specifically requesting that the dismissal be with prejudice, it has been held that the district court must grant that request" (citing courts outside the Tenth Circuit).) To the extent the Court finds that Dr. Tudor would be harmed by voluntary dismissal with prejudice of the United States' Complaint, any such harm should not constitute a basis for denial of the requested dismissal because the Court could ameliorate that harm without denying the motion to dismiss. *See, e.g., U.S. ex rel Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 810 (10th Cir. 2002) (reversed and remanded on other grounds) (finding that "a plaintiff may voluntarily dismiss his action so long as the defendant is not hurt, and the court's consent to voluntary dismissal may be conditioned upon such terms and conditions as the court deems proper" (citations omitted)). For example, Dr. Tudor has identified possible limitations on her ability to use evidence from experts previously designated by the United States as a harm to her that could result from voluntary dismissal of the United States' Complaint. Before taking the extraordinary measure of

refusing to permit the United States to dismiss its Complaint with prejudice based on this or any other allegation of prejudice Dr. Tudor may assert in opposition to this Motion, the Court must consider whether measures can be taken to ameliorate the alleged prejudice. If Dr. Tudor files an opposition to this Motion asserting prejudice attendant to the dismissal of the United States' Complaint with prejudice, the United States reserves the right to propose measures that would ameliorate any alleged prejudice in its reply brief.

Therefore, the United States respectfully requests that this Court enter the proposed order dismissing with prejudice the United States' Complaint pursuant to Fed. R. Civ. P. 41(a)(2).

Respectfully submitted,

Date: September 7, 2017

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CERTIFICATE OF SERVICE

I certify that I served this document on all counsel of record through the Court's electronic filing system on the date below.

Date: September 7, 2017

/s/ Valerie L. Meyer