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CENTRAL DISTRICT OF CALIFORNIA

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Case No.: CV 00-03691-GHK (SHx)

Date: October 23, 2001

Title: United States of America v. City of Santa Paula, et al.

DOCKET ENTRY

PRESENT: Hon. George H. King, United States District Judge

Beatrice Herrera  
Deputy Clerk

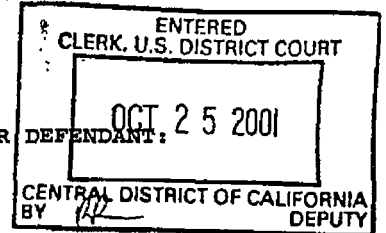
None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:

ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present



PROCEEDINGS: Motion by the United States and Santa Paula to dismiss the complaint without prejudice.

This matter is before the court on the above-titled motion. We conclude that this matter is appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15 (formerly Local Rule 7.11). After considering all papers filed with this motion, and with Defendant-Intervenor's motion for declaratory relief, we rule as follows:

I. Background

On April 6, 2001, the United States ("U.S.") filed a complaint alleging that the City of Santa Paula ("Santa Paula") violated section 2 of the Voting Rights Act of 1965. The U.S. alleged that the at-large system for electing Santa Paula council members diluted Hispanic voting strength. On July 26, 2001, we granted Defendant-Intervenor status to the Santa Paula Voters Opposed to Electoral Redistricting ("Intervenor").

On August 30, 2001, the U.S. and Santa Paula entered into a settlement agreement, which they revised and re-executed on September 26, 2001. The settlement provided for dismissal of the complaint, payment by each side of its costs, and a set of stipulated facts. The U.S. and Santa Paula attempted to include Intervenor, but the parties were unable to reach an agreement.

Pursuant to their settlement agreement, the U.S. and Santa Paula move this court to dismiss the complaint without prejudice and incorporate the terms of their settlement agreement and stipulation of facts into its order. Intervenor requests dismissal only be with prejudice, that the U.S. pay Santa Paula's

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litigation expenses, that Intervenor be granted the right to intervene in future litigation, and that the court reject portions of the stipulation of facts.

## II. Analysis

A plaintiff may voluntarily dismiss its complaint as a matter of right before the filing of an answer or motion for summary judgment. Fed. R. Civ. P. 41(a)(1). The court must also dismiss the complaint if a stipulation of dismissal is signed by all the parties who have appeared in the case. Id. In all other instances,

an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. Fed. R. Civ. P. 41(a)(2).

In our case, an answer has been filed, and the parties, including Intervenor, have not unanimously stipulated to dismissal without prejudice. Therefore, the U.S. and Santa Paula may not dismiss the complaint as a matter of right. However, dismissal by court order is available because the only party objecting to dismissal, Intervenor, has not pled a counterclaim. See October 9, 2001 Minute Order.

### A. Dismissal Without Prejudice

A motion for voluntary dismissal under Rule 41(a)(2) is addressed to our sound discretion. Westlands Water Dist. v. U.S., 100 F.3d 94, 96 (9th Cir. 1996); Hyde & Drath v. Baker, 24 F.3d 1162, 1169 (9th Cir. 1994); Koch v. Hankins, 8 F.3d 650, 652 (9th Cir. 1993); Stevedoring Serv. of Am., Armilla Int'l B.V., 889 F.2d 919, 921 (9th Cir. 1989); Hamilton v. Firestone Tire & Rubber Co., 679 F.2d 143, 145 (9th Cir. 1982). When deciding whether to dismiss with or without prejudice, the court determines whether dismissal without prejudice will result in plain legal prejudice to the objecting party. Westlands, 100 F.3d at 96.

Plain legal prejudice means prejudice to "some legal interest, some legal claim, some legal argument." Id. at 97; Bader v. Elec. for Imaging, Inc., 195 F.R.D. 659, 661-62 (N.D. Cal. 2000) (quoting Westlands with approval). It can result from

the loss of a right to a jury trial or potential statute of limitations arguments. Westlands, 100 F.3d at 97; Petaluma City Sch. Dist. v. Victor D., 2001 WL 492466, \*2 (N.D. Cal. May 3, 2001). It can also result when dismissal denies a party of not simply that particular federal forum, but any federal forum. Petaluma City Sch. Dist., at \*2 (citing Westlands).

Uncertainties caused by the threat of future litigation, expenses, or delays do not constitute prejudice. Westlands, 100 F.3d at 97-98; see also Creative Labs, Inc. v. Orchid Tech., 1997 WL 588923, \*2 (N.D. Cal. Sept. 12, 1997) ("the prospect of future litigation is insufficient to establish plain legal prejudice"); Hyde & Drath, 24 F.3d at 1169 ("inconvenience of defending another lawsuit or the fact that the defendant has already begun trial preparations does not constitute prejudice."); Hamilton, 679 F.2d at 146 (rejecting litigation expenses as basis for legal prejudice); Shumate v. Buna, 1998 WL 822771, \*3-4 (N.D. Cal. Nov. 13, 1998) (granting voluntary dismissal without prejudice two years after case filed because defendants did not explain how delay foreclosed their ability to assert a legal interest, claim, or argument in the future). A pending dispositive motion, such as one for summary judgment, is a factor to consider before granting dismissal without prejudice, but does not necessarily constitute prejudice. Creative Labs, Inc., \*2; see also Westlands, 100 F.3d at 94.

In this case, Intervenor does not object to dismissal without prejudice because it will lose the right to a trial by jury or potential statute of limitations arguments. Nor does it allege that dismissal will result in the complete denial of any federal forum. Instead, Intervenor objects primarily on the grounds of uncertainty, expense and delay, grounds which the Westlands court and other Ninth Circuit authorities reject as insufficient to establish prejudice.

Dismissal without prejudice may leave "a cloud of fear over Santa Paula," but Intervenor nevertheless retains the ability to effectively advocate against the U.S. in future litigation. Intervenor does not explain why litigation expenses in this case are prejudicial or why we should distinguish this case from the numerous circuit authorities which have held expenses not so prejudicial as to require dismissal with prejudice. Moreover, Intervenor relies on Santa Paula's expenses, not its own. Santa Paula does not seek to recover its litigation expenses, and explicitly states so in its settlement agreement with the U.S. and its reply in the instant motion.

Intervenor argues that the U.S. improperly delayed before seeking dismissal. Though the U.S. may have been able to settle with Santa Paula earlier, this motion is still brought a little over a year after commencement, well within what other courts

have considered reasonable. See, e.g., Shumate, 1998 WL 822771, \*3-4 (granting voluntary dismissal after two years). The purported delay does not affect a legal claim, interest, or argument otherwise available to Intervenor. Furthermore, we do not find that the U.S. filed this motion for an improper purpose.

Intervenor contends that dismissal will result in prejudice because it will have to file a motion to intervene in future litigation. However, this is really a complaint about litigation expenses, which does not rise to the level of legal prejudice. Moreover, pursuant to the settlement agreement, we expect the U.S. to act in good faith and stipulate to Intervenor's return should the issues in a future case be substantially the same. If the U.S. does not, Intervenor could seek relief under, among other things, 28 U.S.C. § 1927. Intervenor will not have to unnecessarily incur the same expenses twice. However, it is premature for us to condition dismissal without prejudice on Intervenor's ability to intervene again without further examination of the circumstances surrounding a lawsuit that has yet to be filed, which indeed may never be filed.

Intervenor next objects to numerous stipulated facts incorporated into the settlement agreement because it finds them offensive to the dignity of Santa Paula. Intervenor may find the facts offensive, but they do not constitute legal prejudice. The settlement agreement has no effect on Intervenor's rights, nor could it, since Intervenor is not a signatory.

Finally, Intervenor claims to have filed a motion for summary judgment and argues that such a motion bars dismissal by court order. Westlands is to the contrary. There, the Ninth Circuit reversed a district court for granting summary judgment and refusing to dismiss without prejudice. 100 F.3d at 94, 97.

Therefore, we **GRANT** the motion to dismiss without prejudice.

#### **B. Terms and Conditions on Dismissal**

The only remaining issue is what terms, if any, to make a condition of the dismissal without prejudice. Intervenor urges us to condition any dismissal on payment of Santa Paula's litigation expenses and on Intervenor's right to intervene in future litigation. The decision to place terms or conditions on dismissal is within our sound discretion. Stevedoring Serv. of Am., 889 F.2d at 921, Koch, 8 F.3d at 652.

##### **1. Attorneys Fees and Costs**

Attorneys fees are not necessary before granting a dismissal without prejudice, despite the possibility of future litigation on similar issues. Stevedoring Serv. of Am., 889 F.2d at 921.

Even if granted, a defendant is only entitled to recover attorneys fees or costs for work which is not useful in continuing litigation between the parties. Koch, 8 F.3d at 652.

As discussed above, Intervenor does not seek recovery of its own costs and attorneys fees. It wants the court to condition dismissal on payment of Santa Paula's fees. Intervenor does not explain why this condition is necessary to protect itself or Santa Paula against duplicative litigation expenses. In fact, the expenses incurred to date would undoubtedly be useful to Santa Paula should the U.S. decide to reassert its allegations concerning voting rights violations.

This is a complex case and the U.S. does not appear to have taken unfounded positions. Consequently, for the above stated reasons, we decline to make payment of Santa Paula's litigation expenses a condition of dismissal.

## 2. The Right to Re-Intervene

Intervenor requests an automatic right to intervene in future litigation. We decline to make this a condition of dismissal. See discussion supra at II A ¶ 7, p.4. We do not consider it appropriate to issue what in effect is an advisory opinion for a case that might never be brought, involving as yet undetermined claims, and relating to undeterminable facts. Intervenor's interests are adequately protected by the good faith requirement on the U.S. in the settlement agreement.

## III. Disposition

The action is **DISMISSED** without prejudice. The terms of the settlement agreement between the U.S. and Santa Paula are incorporated into this order, as well as the stipulation of facts. Their incorporation shall have no binding effect upon Intervenor. Intervenor's stayed motions are **DENIED** as moot.

IT IS SO ORDERED.

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