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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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John W. Batchan,

) CV 12-00038-PHX-FJM

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Plaintiff,

) **ORDER**

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vs.

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City of Glendale; Westgate Property LLC;  
Coyotes Newco LLC; Arena Newco LLC;  
David Burke; Sam Cornejo; Unknown  
Hawkins,

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Defendants.

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The court has before it plaintiff's motion for dismissal without prejudice (doc. 32) and defendants Coyotes Newco LLC and Arena Newco LLC's response (doc. 35). Plaintiff did not reply, and the time for replying has expired. A few days after plaintiff filed his motion to dismiss, plaintiff and defendants Detective Robert Hawkins and the City of Glendale submitted a stipulation to dismiss these two defendants with prejudice (doc. 33).

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Pursuant to Rule 41(a)(2), Fed. R. Civ. P., a court's dismissal of an action upon plaintiff's request is without prejudice unless otherwise noted. We dismiss "on terms that the court considers proper." Id. We may, but are not required to, impose costs and attorney's fees on a plaintiff granted a voluntary dismissal. Stevedoring Servs. of Am. v. Armilla Int'l B.V., 889 F.2d 919, 921 (9th Cir. 1989).

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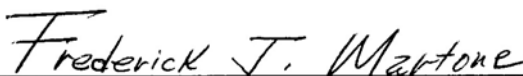
Coyotes Newco and Arena Newco urge us to award them their costs and attorney's

1 fees incurred in defending this action. They argue that plaintiff filed a number of improper  
2 court filings that forced these defendants to incur unnecessary expenses, and that requiring  
3 plaintiff to pay fees will remind him that any future litigation should comply with the rules  
4 of civil procedure. This action is in its infancy. The Rule 16 scheduling conference has not  
5 been held. There has been no opportunity to test the merits of plaintiff's claims. We note  
6 that there were no substantive motions filed in this action. Plaintiff seeks dismissal so that  
7 he may consult a lawyer to assist him with his case. He does not appear to seek dismissal in  
8 bad faith.

9 **IT IS ORDERED GRANTING IN PART** plaintiff's motion for dismissal without  
10 prejudice (doc. 32). **IT IS ORDERED DISMISSING** defendants Westgate Property LLC,  
11 Coyotes Newco LLC, Arena Newco LLC, David Burke, and Sam Cornejo without prejudice.  
12 Pursuant to stipulation (doc. 33), **IT IS ORDERED DISMISSING** defendants Detective  
13 Robert Hawkins (named as "Unknown Hawkins" in the complaint) and the City of Glendale  
14 with prejudice. Each party to bear his own costs and attorney's fees.

15 The Clerk shall enter judgment.

16 DATED this 19<sup>th</sup> day of March, 2012.

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 Frederick J. Martone  
United States District Judge