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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kim Cramton, Plaintiff, v. Grabbagreen Franchising LLC, et al., Defendants.	No. CV-17-04663-PHX-DWL **ORDER**

Pending before the Court is Plaintiff Kim Cramton's motion to dismiss, with prejudice, the sole remaining claim in this case, which is her minimum wage claim in Count Four against Defendant Grabbagreen Franchising LLC ("GFL"). (Doc. 447.) For the reasons that follow, the motion is granted.

BACKGROUND

As recounted in more detail in previous orders (Doc. 444), Cramton originally asserted an array of claims against an array of defendants, but some of those claims were resolved via summary judgment (Doc. 247) and most of the remaining claims were determined to be subject to contractual jury waivers (Doc. 345). Given these rulings, and in light of other considerations, the Court severed Cramton's minimum wage claim in Count Four against GFL (as to which Cramton retained her right to a jury trial) from the remaining claims and scheduled those claims for a bench trial. (Doc. 345 at 39.) During the ensuing bench trial, Cramton prevailed on a related minimum wage claim she had asserted against Defendant Keely Newman ("Keely"), obtaining an award of $50,871.

(Doc. 429.) Afterward, the Court asked the parties how they intended to proceed with respect to Cramton's unresolved minimum wage claim against GFL. (Doc. 430.) Although Cramton initially suggested it might be necessary to hold a jury trial on that claim (Doc. 432), she has now changed course and seeks to dismiss her claim against GFL with prejudice.

Cramton's motion to dismiss is less than a page long. (Doc. 447.) Citing Rule 41(a)(2) of the Federal Rules of Civil Procedure, Cramton contends her dismissal request should be granted because GFL will "not lose any 'substantial right' by the dismissal" and instead will "benefit because the dismissal will be with prejudice and the parties will be free to seek fees and costs after entry of judgment." (*Id.* at 1-2.)

GFL opposes Cramton's dismissal request. (Doc. 449.)[1] GFL's essential argument is that Cramton shouldn't have prevailed during the bench trial on her minimum wage claim against Keely and the upcoming jury trial represents an opportunity "to present the documentary evidence that will demonstrate and expose [Cramton's] false claims," to "exonerate GFL from any [indemnification] claim Keely could assert against it arising from Count IV," and to "exonerate Keely and establish Keely as a prevailing party under Count IV." (*Id.* at 4.) For these reasons, GFL contends it would suffer plain legal prejudice from a dismissal. (*Id.*) GFL also contends that "[b]y dismissing the case right before the jury trial that Cramton demanded, insisted upon and fought for, GFL will suffer legal prejudice because Cramton's conduct caused GFL to incur substantial fees and costs in litigating this count for almost 4 years and in preparation for trial." (*Id.* at 4.) Finally, GFL argues in the alternative that if the Court were to consider granting Cramton's dismissal request, it should do so subject to the following three conditions: "(1) the Order should state that Count IV against GFL is 'dismissed with prejudice having been adjudicated upon the merits' . . . ; (2) the Order should state that GFL is the prevailing party on the merits of Count IV . . . ; and (3) Cramton should be required to pay all of GFL's legal fees and costs

[1] GFL requested oral argument, but this request is denied because the issues are fully briefed and argument would not aid the decision process. *See* LRCiv 7.2(f).

associated with" various matters. (*Id.* at 7.)

In reply, Cramton characterizes GFL's position as "bewildering[]," argues that "[t]here is absolutely no upside to Defendants seeking a jury trial on Plaintiff's minimum wage claim against GFL, other than to unduly expand and delay litigation, and to harass Plaintiff," contends that GFL wouldn't be entitled to attorneys' fees even if it prevailed on Count Four following a jury trial, and explains that "[t]he only reason that [she] is will[ing] to forego this right and jury trial against GFL (and her right to additional attorneys' fees), is because Defendants have threatened that the result of this victory would be hollow, and that Plaintiff will be unable to collect on any judgment against any of the Defendants." (Doc. 450 at 3-4.)

Following submission of Cramton's reply, GFL sought and obtained leave to file a sur-reply. (Docs. 451, 452.) In the sur-reply (Doc. 453), GFL provides information about the parties' settlement negotiations (*id.* at 1-2 & n.1), explains why it believes it would prevail on the merits during a jury trial on the minimum wage claim (*id.* at 2-9), states that the Court could vacate the prior ruling against Keely following a ruling in GFL's favor (*id.* at 9-10), and accuses Cramton of dishonesty (*id.* at 10-11).

DISCUSSION

The Court is confronted with an unusual situation—a plaintiff wishes to dismiss all of her claims against a particular defendant with prejudice, but that defendant refuses to accept this unqualified victory and seeks to force the plaintiff to litigate her claims to completion via jury trial. Tellingly, GFL fails to identify any case denying a dismissal request under analogous circumstances.

The analysis here is governed by Rule 41(a)(2) of the Federal Rules of Civil Procedure.[2] Rule 41(a)(2) 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" and

[2] Although "Rule 41(a) governs dismissals of *entire actions*, not of individual claims," "[m]ost courts have held that Rule 41(a) does properly apply when there are multiple defendants and the plaintiff wishes to dismiss all of its claims against one of the defendants." *See* 1 Gensler, Federal Rules of Civil Procedure, Rules and Commentary, Rule 41, at 1244-45 (2021). Here, Cramton seeks to dismiss all of her outstanding claims against GFL, so Rule 41(a) applies.

that "[u]nless the order states otherwise, a dismissal under this paragraph . . . is without prejudice."

Most disputes over dismissal requests under Rule 41(a)(2) involve situations in which the plaintiff seeks to dismiss *without* prejudice and the defendant identifies some reason why it would be harmed by such a dismissal, such as the potential for future litigation. *See, e.g.*, *Westlands Water Dist. v. United States*, 100 F.3d 94 (9th Cir. 1996). Thus, the test articulated by the Ninth Circuit for "ruling on a motion to dismiss without prejudice" is "whether the defendant will suffer some plain legal prejudice as a result of the dismissal." *Id.* at 96. In that circumstance, "legal prejudice is just that—prejudice to some legal interest, some legal claim, some legal argument. Uncertainty because a dispute remains unresolved is not legal prejudice." *Id.* at 97.

Here, Cramton does not seek a without-prejudice dismissal that would leave open the possibility of future litigation against GFL. Instead, she seeks to dismiss her claim against GFL with prejudice and bring this litigation to a close. Some courts have suggested that such a request must always be granted. For example, in *Smoot v. Fox*, 340 F.2d 301 (6th Cir. 1964), the Sixth Circuit granted a writ of mandamus after a district court denied a plaintiff's motion to dismiss with prejudice, explaining:

> Rule 41(a)(2) of the Federal Rules of Civil Procedure . . . contemplates the dismissal by plaintiff of an action without prejudice and is clearly discretionary with the court. All of the cases cited by respondent, supporting the discretionary right of the court to dismiss cases on motion of the plaintiff, concern the dismissal without prejudice. No case has been cited to us, nor have we found any, where a plaintiff, upon his own motion, was denied the right to dismiss his case with prejudice. . . . We know of no power in a trial judge to require a lawyer to submit evidence on behalf of a plaintiff, when he considers he has no cause of action or for any reason wishes to dismiss his action with prejudice, the client being agreeable. . . . Dismissal of an action with prejudice is a complete adjudication of the issues presented by the pleadings and is a bar to a further action between the parties. An adjudication in favor of the defendants, by court or jury, can rise no higher than this.

Id. at 302-03. Meanwhile, although other courts have "reject[ed] a per se rule" that "the

court has no discretion to withhold dismissal when it is sought with prejudice," those courts have "recogniz[ed] that there will be few occasions to deny such a motion." 1 Gensler, Federal Rules of Civil Procedure, Rules and Commentary, Rule 41, at 1257 (2021). Thus, the general rule is that "a district court will grant a plaintiff's motion to dismiss where the motion is to dismiss *with prejudice*." *Id.* Additionally, "courts generally should not require payment of attorney's fees as a condition of [with-prejudice] dismissal because the defendant is not confronted with the risk of repeat litigation, although such a condition might be appropriate in exceptional circumstances." *Id. See also Chavez v. Northland Grp.*, 2011 WL 317482 (D. Ariz. 2011) (granting motion to dismiss with prejudice, emphasizing that "[t]he fact that the dismissal is with prejudice, such that Plaintiff's claims cannot be reasserted in another federal suit, supports a finding that the dismissal will cause no legal prejudice," and declining to impose costs and fees as a condition of dismissal); *Puello v. Citifinancial Servs., Inc.*, 2010 WL 1541503, *2-3 (D. Mass. 2010) (noting that "[c]ertain judges . . . have taken a bright-line approach that grants voluntary motions to dismiss where, as here, a plaintiff moves to dismiss his claims with prejudice" and explaining that the justifications for the bright-line approach include "that dismissal with prejudice is appropriate because it provides complete protection to the defendant" and that, "based on concerns of practicality and logistics," a court has no practical ability to force a plaintiff to litigate a claim).

With this backdrop in mind, GFL faces an uphill climb. Even assuming the *per se* rule discussed in *Smoot* doesn't apply, GFL has not identified a persuasive (let alone extraordinary) reason why Cramton's voluntary-dismissal-with-prejudice request should be denied or subjected to the conditions proposed in GFL's brief. Cramton asserted her minimum wage claim against GFL in good faith and was prepared to litigate it concurrently with her minimum wage claim against Keely. It was only after Defendants filed their jury-waiver motion in June 2020 (Doc. 322)—that is, after the Final Pretrial Conference—that Cramton's claim against GFL was unexpectedly severed from her claim against Keely. Cramton then prevailed on her minimum wage claim against Keely in the bench trial,

obtaining an award of $50,871, and has explained that she is willing to dismiss her related claim against GFL at this late juncture, despite having just prevailed on essentially the same claim in the bench trial, because it is unclear whether GFL would be able to satisfy any resulting judgment. This is a logical explanation for an outcome that is, in many ways, extremely favorable to GFL—it avoids the possibility of GFL being held liable for damages and avoids the accrual of more attorneys' fees and costs.

The Third Circuit's decision in *Carroll v. E One Inc.*, 893 F.3d 139 (3d Cir. 2018), provides a useful counterpoint in considering GFL's proposed conditions of dismissal. There, the Third Circuit affirmed an award of attorneys' fees and costs as a condition of granting the plaintiffs' motion to dismiss their claims with prejudice. *Id.* at 140. Although the court noted that "attorneys' fees and costs should not typically be awarded in a Rule 41(a)(2) dismissal with prejudice," it also noted that "exceptional circumstances may sometimes warrant granting such an award" and held that "[t]he facts of the instant case exemplify such exceptional circumstances: a litigant's failure to perform a meaningful pre-suit investigation, coupled with a litigant's repeated practice of bringing claims and dismissing them with prejudice after inflicting substantial costs on the opposing party and the judicial system." *Id.* at 149. Those are not remotely the facts here. Cramton developed a legitimate claim, which has already resulted in a large award in her favor against an individual defendant, and has chosen not to pursue that claim against a corporate co-defendant out of concern that the corporate co-defendant may be judgment-proof.

Before concluding, it is important to make two final observations on the issue of attorneys' fees and costs. First, although GFL asserts that "Cramton's conduct caused *GFL* to incur substantial fees and costs in litigating this count for almost 4 years and in preparation for trial" (Doc. 449 at 4, emphasis added), this assertion overlooks that Keely (who is represented by the same counsel as GFL) was also named as a defendant in Count Four and went to trial on that count. Defendants have not attempted to identify any additional trial-related expenses, separate and apart from those arising from the defense of the minimum wage claim against Keely in Count Four, that GFL incurred as a result of

being named a co-defendant in this count. Second, although the Court is granting Cramton's motion to dismiss her claim in Count Four against GFL without conditions, Cramton acknowledges that nothing about this outcome precludes GFL (or any other party) from filing a motion for attorneys' fees and costs within 14 days of entry of judgment, should there be a valid basis for doing so. (Doc. 447 at 2 ["[T]he parties will be free to seek fees and costs after entry of judgment under LRCiv 54.2."].)

Accordingly,

IT IS ORDERED that Cramton's motion to dismiss (Doc. 447) is **granted**.

IT IS FURTHER ORDERED that, because the disposition of this motion results in the resolution of all claims and counterclaims in this action, the Clerk shall enter judgment accordingly and terminate this action.

Dated this 23rd day of November, 2021.

Dominic W. Lanza
United States District Judge