

1 **I. Background**

2 Plaintiff asserts that in May 2017, she was a lawful occupant at 2800 Laurel Dr. in Bakersfield,
3 California, a residence that was owned by Plaintiff’s father. (Doc. 32 at 3, ¶¶11-14) She alleges that
4 after her father’s death, seven men—including Johnny Castro and several family members— came to
5 the property where they “continuously and repeatedly attempted to physically force their way into
6 Plaintiff’s home by attempting to pry the doors open, pounding on the walls, doors, windows and/or the
7 structure of the Residence.” (*Id.* at 4, ¶¶ 17-26) Plaintiff alleges they “threatened ... physical violence”
8 and disabled the electricity to the house with the electrical supply box. (*Id.*, ¶¶ 26- 27) Plaintiff called
9 911, which dispatched several police officers to the residence, who arrived one to two hours after the
10 initial call. (*See id.* at 4-5)

11 Plaintiff alleges that after Bakersfield Police officers arrived, they did not knock on the door and
12 or “reassure the Plaintiff that she was safe.” (Doc. 32 at 6, ¶¶ 35-37) Plaintiff asserts officers on scene
13 did not introduce themselves, and as a result she “was confronted by anonymous, armed, uniformed
14 BPD Officers demanding that she leave her lawful Residence after having endured threats of serious
15 bodily injury, potential felony interruption of electrical service, and continuous attempts to break into
16 her home by the Castro Conspirators over the course of approximately two (2) hours.” (*Id.* at 7, ¶ 41)

17 According to Plaintiff, she looked out from the residence and was spotted by Officer Maxwell.
18 (Doc. 32 at 6, ¶ 35) At that point, Officer Maxwell directed Plaintiff to “get out here,” and never
19 allowed “Plaintiff to tell him her side of the dispute” prior to instructing her to exit the house. (*Id.*, ¶
20 38) She contends the officer “had pre-determined to remove [Plaintiff] from her residence without even
21 considering her position.” (*Id.*, ¶ 39) Plaintiff reports she attempted tell the officers her side, but the
22 officers would not listen and ordered Plaintiff to surrender her keys to the home. (*Id.* at 8, ¶¶ 48-50)
23 Officer Maxwell removed Plaintiff’s key from the ring and gave it to her family members, who showed
24 the officers a fraudulent document indicating ownership of the house. (*Id.*, ¶¶ 50-53) Furthermore,
25 Plaintiff contends the officers threatened her with arrest if she did not leave, and refused to allow her
26 “to reenter her home to obtain any of her personal property.” (*Id.* at 9, ¶ 54)

27 On July 12, 2017, the Kern County Superior Court issued a domestic violence restraining order
28 against Johnny Castro for Plaintiff, after listening to testimony addressing the events that transpired in

1 May 2017. (Doc. 32 at 11, ¶ 67)

2 Plaintiff contends the Bakersfield Police officers who responded to the scene were “not properly
3 trained and supervised to comply with such basic law enforcement procedures and standards.” (Doc.
4 34 at 2) She also argues “the involved BPD officers ignored basic law enforcement standards of
5 training, practice and procedure and ordered her from her home in favor of men engaged in clearly
6 criminal conduct.” (*Id.*) Thus, on March 29, 2018 Plaintiff filed a complaint against the City and its
7 officers, asserting her civil rights had been violated as a result of the officers’ actions, including her
8 removal from the home. (Doc. 1)

9 Following challenges to the pleadings, Plaintiff filed a second amended complaint on
10 November 1, 2018. (Doc. 32) Defendants filed their answer on November 15, 2020. (Doc. 33) The
11 Court held a scheduling conference with the parties and issued an order with the deadlines governing
12 the action on December 13, 2018. (Doc. 37)

13 On May 19, 2020, Plaintiff filed the motion to dismiss without prejudice pursuant to Rule 41 of
14 the Federal Rules of Civil Procedure, seeking dismissal in order to “pursue collateral state court
15 litigation” against the City. (Doc. 52) Defendants filed their opposition to the motion on May 29, 2020¹
16 (Doc. 54), to which Plaintiff filed a reply on June 12, 2020. (Doc. 55)

17 **II. Dismissal under Rule 41**

18 Rule 41 of the Federal Rules of Civil Procedure specifies the circumstances under which an
19 action may be dismissed. Once a defendant has filed an answer or motion for summary judgment, a
20 plaintiff may not unilaterally dismiss. *See Hamilton v. Shearson Lehman Am. Express, Inc.*, 813 F.2d
21 1532, 1535 (9th Cir. 1987). Rather, a plaintiff must seek dismissal under Rule 41(a)(2), which
22 provides “an action may be dismissed at the plaintiff’s request only by court order, on terms that the
23 court considers proper.” Fed.R.Civ.P. 41(a)(2). Unless otherwise ordered by the Court, dismissal
24 under Rule 41(a)(2) “is without prejudice.” *Id.*

25 The Ninth Circuit explained, “The purpose of the rule is to permit a plaintiff to dismiss an
26 action without prejudice so long as the defendant will not be prejudiced.” *Stevedoring Serv. of Am. v.*
27 *Armilla Int’l*, 889 F.2d 919, 921 (9th Cir. 1991). Thus, when ruling upon a Rule 41 motion to dismiss

28 ¹ The same date, Defendants filed a motion for summary judgment. (Doc. 53)

1 without prejudice, the Court must determine whether the defendant will suffer legal prejudice. *Hyde &*
2 *Drath v. Baker*, 24 F.3d 1162, 1169 (9th Cir. 1994); *Hamilton v. Firestone Tire & Rubber Co.*, 679
3 F.2d 143, 145 (9th Cir. 1982). Legal prejudice “is just that - prejudice to some legal interest, some legal
4 claim, some legal argument.” *Westlands Water Dist. v. U.S.*, 100 F.3d 94, 97 (9th Cir. 1996). In other
5 words, legal prejudice is shown “where actual legal rights are threatened or where monetary or other
6 burdens appear to be extreme or unreasonable.” *Id.* The burden is on the defendant to show a matter
7 should not be dismissed due to legal prejudice. *Edstrom v. NDEX West, LLC*, 2012 WL 4092420, at *2
8 (E.D. Cal. Sept. 17, 2012) (“there is no requirement in this Circuit that a plaintiff explain its reasons for
9 seeking dismissal; rather, it is the defendant's burden to show that it will suffer plain legal prejudice in
10 opposing a plaintiff’s voluntary dismissal”).

11 Motions for voluntary dismissal under Rule 41(a)(2) should be liberally granted if it will not
12 result in legal prejudice. *See Stevedoring*, 889 F.2d at 921; *see also Watson v. Clark*, 716 F.Supp.
13 1354, 1355 (D.Nev. 1989) (“motions filed under Fed.R.Civ.P. 41(a)(2) should be liberally granted, as
14 long as no other party is prejudiced”). The decision to grant a voluntary dismissal under Rule 41(a)(2)
15 is addressed to the district court’s discretion and “will not be disturbed unless the court has abused its
16 discretion.” *Westlands Water Dist.*, 100 F.3d at 96 (citations omitted).

17 **III. Discussion and Analysis**

18 Plaintiff asserts she wants to “pursue collateral state court litigation to enforce her judgement
19 against Defendant City of Bakersfield.” (Doc. 52-2 at 2) According to Plaintiff, “In Public Records Act
20 litigation, denominated as Kern County Superior Court case number BCV-102089-JEB (the ‘PRA
21 Litigation’) Ms. Isgar ‘prevailed’ against the City of Bakersfield.” (*Id.* at 3, ¶ 8) She contends the City
22 was ordered “to engage in a “diligent search” for public records including “memorandum, emails,
23 reports, studies, etc. related to and/or discussing the training needs of the Bakersfield Police
24 Department.” (*Id.*, ¶ 9) Plaintiff reports that the City represent that it “engaged in a diligent search, was
25 fully compliant with the Writ, and possessed no additional documents” in August 2019. (*Id.*, ¶10)
26 Plaintiff contends the City took “the opposite position” during the course of this litigation and indicated
27 “a training plan which outlines the training needs is forwarded to the chief of police.” (*Id.* at 3-4, ¶¶
28 11-12) Plaintiff intends to pursue litigation against the City in the state court for failure to comply with

1 the PRA order, and seeks dismissal of the action in the federal court to avoid the burdens of litigating
2 “in both state and federal jurisdictions.” (*Id.* at 8, ¶ 39)

3 Defendants oppose dismissal to the extent that it is without prejudice, asserting the Court should
4 dismiss the action *with* prejudice. (Doc. 54 at 11) According to Defendants, “Plaintiff’s effort to
5 voluntarily dismiss this case so she can re-file the case in state court is nothing more than forum
6 shopping.” (*Id.* at 4) Defendants maintain the dismissal is “a blatant attempt to cure the fact that she
7 and her counsel failed to conduct proper and effective discovery prior to the deadlines that were
8 established by this Court, and to avoid the final determination of this case vis a vis Defendants’ Motion
9 for Summary Judgment.” (*Id.*) Defendants maintain dismissal at this juncture, and having “to start a
10 new in State Court” would be “completely unfair and prejudicial given the resources that have been
11 expended getting to this point,” including the completion of “hundreds of discovery requests,” and the
12 designation of an expert. (*Id.* at 12)

13 Significantly, the threat of future litigation, uncertainty because a dispute remains unresolved,
14 and the expenses incurred in defending against the lawsuit do not constitute legal prejudice. *Westlands*
15 *Water Dist.*, 100 F.3d at 96-97. The Ninth Circuit determined that “legal prejudice does not result
16 merely because the defendant will be inconvenienced by having to defend in another forum or where a
17 plaintiff would gain a tactical advantage by that dismissal.” *Smith v. Lenches*, 263 F.3d 972, 976 (9th
18 Cir. 2001) (citation omitted); *see also WPP Lux. Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d at
19 1059 n. 6 (observing that under Rule 41(a)(2), “[l]egal prejudice does not result merely because a
20 defendant will be inconvenienced by potentially having to defend the action in a different forum or
21 because the dispute will remain unresolved,” and affirming dismissal where the only prejudice the
22 defendants argued was “the risk of having to defend this action again”).

23 Defendants argue the action should be decided on the merits with their motion for summary
24 judgment—filed on the same date as their opposition to this motion—and it would be “unfair” for
25 Defendants to start litigating the claims anew in the state court. (Doc. 54 at 11-12) However, as
26 discussed above, the Ninth Circuit determined the threat of possible future litigation in a different
27 forum is not legal prejudice. Similarly, a defendant is unable to show legal prejudice where dismissal
28 would moot a motion for summary judgment. *See, e.g., Edstrom v. NDEX West, LLC*, 2012 WL

