IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANTA ROSA MEMORIAL HOSPITAL, et al., Plaintiffs, v. DAVID MAXWELL-JOLLY, Director of the California Department of Health Care Services, Defendant.	Case No. CV 08-5173 SC ORDER DENYING PLAINTIFFS' MOTION TO DISMISS

Now before the Court is the above-captioned Plaintiffs' motion to voluntarily dismiss their case without prejudice. ECF No. 117 ("Mot."). Defendant Toby Douglas,[1] Director of the California Department of Health Care Services ("DHCS"), opposes the motion. ECF No. 118 ("Opp'n"). The matter is fully briefed, ECF No. 120 ("Reply"), and appropriate for decision without oral argument, Civ. L.R. 7-1(b).

Ruling on this motion requires some procedural background, since this case's posture has changed drastically after several

[1] Mr. Douglas's predecessor, David Maxwell-Jolly, is named in the caption, but Mr. Douglas is now the Director of DHCS.

intervening appellate rulings and agency actions.

Plaintiffs filed this case in November 2008. They moved for a preliminary injunction barring DHCS from prospectively implementing a 10 percent Medi-Cal payment reduction enacted pursuant to California Assembly Bill 5 2008 ("AB 5"). The undersigned granted that motion based on then-standing Ninth Circuit law, which held that the federal Medicaid Act required states to conduct cost studies before reducing Medicaid reimbursements -- studies the state did not conduct pursuant to the law at that time. ECF No. 68 ("PI Order") at 4-10. DHCS appealed, and the Ninth Circuit affirmed in May 2010, ECF No. 92 ("USCA Mem."), after which DHCS filed a petition for certiorari before the Supreme Court. The Supreme Court granted that petition in January 2011. ECF No. 104 ("Cert."). In October 2011, while DHCS's Supreme Court case was still pending, the Centers for Medicare and Medicaid Services ("CMS"), divisions of the federal Department of Health and Human Services ("HHS"), approved California's Medicaid State Plan Amendment ("SPA") concerning the rate reductions that Plaintiffs challenged in this case.

The question presented to the Supreme Court in DHCS's case, Douglas v. Independent Living Center of Southern California, Inc., 132 S. Ct. 1204 (2012), was "whether Medicaid providers and recipients may maintain a cause of action under the Supremacy Clause to enforce a federal Medicaid law -- a federal law that, in their view, conflicts with (and pre-empts) state Medicaid statutes that reduce payments to providers." Id. at 1207.

The Supreme Court did not specifically rule on that question, because it held that CMS's intervening approval of the SPA changed

the case's posture such that decision on the merits was inappropriate at that time. See id. at 1210-12. The Court expressed some doubt that Plaintiffs could succeed on a Supremacy Clause cause of action, suggesting that, under the circumstances, a case brought against the federal agency under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., would be more apt after the agency had acted. Id. The Supreme Court therefore remanded to the Ninth Circuit the question of whether the plaintiffs could proceed under the Supremacy Clause after the agency had made a final decision. Id. at 1211. Justice Roberts, in dissent, would have held directly that the Supremacy Clause does not supply a private right of action under its own force when Congress did not create such a right by statute. Id. at 1213-14 (Roberts, J., dissenting).

On remand, in January 2014, the Ninth Circuit reversed the Court's preliminary injunction order. Santa Rosa Mem'l Hosp. v. Douglas, -- Fed. App'x --, 2014 WL 68485 (9th Cir. Jan. 9, 2014). Rather than ruling on the Supremacy Clause issue, the Ninth Circuit based its reversal on the fact that the cost studies requirement, which was the basis of the undersigned's PI Order, had been overruled during the pendency of Plaintiffs' appeal in Managed Pharmacy Care v. Sebelius, 716 F.3d 1235 (9th Cir. 2013). Managed Pharmacy Care involved both Supremacy Clause and APA claims against state and federal agencies. Id. at 1243-44. The Ninth Circuit held that HHS's reasonable final decision to approve the SPA had foreclosed both claims. Id. The Ninth Circuit did not specifically rule on whether there could be a right of action under the Supremacy Clause after HHS had acted, though like the Supreme

Court, it doubted whether such a claim could succeed. Id. at 1252.

Plaintiffs evidently understand that this line of precedent is adverse to their present claim. They now contend that their case is futile in its current posture, and that it is best brought as an APA action against CMS, though they also seek to pursue a state court action against DHCS. See Reply at 5-6. However, despite the Ninth Circuit's instructions on remand -- to decide the issue of what impact CMS approval has on the propriety of granting Plaintiffs a preliminary injunction in a Supremacy Clause case -- the merits of Plaintiffs' case are still not yet before the Court. Plaintiffs now ask the Court to grant an order under Federal Rule of Civil Procedure 41(a)(2) voluntarily dismissing this case without prejudice. Mot. at 1-2.

Plaintiffs made the same request of the Ninth Circuit. Santa Rosa Mem'l Hosp., 2014 WL 68485, at *2. The Ninth Circuit held that it could not decide Plaintiffs' request for dismissal while an appeal of a preliminary injunction was before it. Id. But if it could have decided that request, the Ninth Circuit stated, it would have denied it, since it appeared that Plaintiffs sought dismissal "in an attempt to deny DHCS a sovereign immunity defense, to evade a federal forum for the litigation of federal issues after final action by a federal agency, and to avoid adverse rulings by federal courts interpreting federal law." Id. (citing Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th Cir. 1996); Kern Oil & Refining Co. v. Tenneco Oil Co., 792 F.2d 1380, 1389-90 (9th Cir. 1986)).

In their present motion to voluntarily dismiss their case without prejudice, Plaintiffs urge the Court not to follow the

Ninth Circuit's suggestions, reminding the Court that the statements were dicta, and that the Ninth Circuit did not actually rule on the dismissal issue. Reply at 2. The Court is aware. Even so, the Ninth Circuit is correct.

Plaintiffs contend that they are not trying to evade a federal forum for the litigation of federal issues, because as the Supreme Court (both majority and dissent) noted in Douglas, and as Managed Pharmacy Care implies, Plaintiffs' Supremacy Clause suit against DHCS is effectively foreclosed at this point. Reply at 4 ("[T]he existing litigation . . . is now pointless and futile."). But the Ninth Circuit remanded this case to the undersigned to determine, as a legal matter, whether Plaintiffs could bring a Supremacy Clause case (a federal issue) in this court (a federal forum) after CMS's decision on the SPA (a final decision by a federal agency). The Ninth Circuit did not instruct the Court not to hear Plaintiffs' claims, a holding that would have made colorable Plaintiffs' contention that it is not just trying to avoid the federal courts at this point.

The Court finds that in this posture, Plaintiffs' Rule 41 motion is an attempt to avoid litigating this federal issue in federal court after a federal agency's final decision, as the Ninth Circuit stated. Moreover, given the legal holdings from Douglas and Managed Pharmacy Care, as well as Plaintiffs' evident concern that they have no way to obtain a favorable ruling on their claim against DHCS, see Reply at 3-4, the Court finds that Plaintiffs are seeking to avoid an adverse ruling by a federal court interpreting federal law.

Finally, as further argument in favor of dismissal, Plaintiffs

contend that it would be futile for the Court to decide Defendant's planned summary judgment motion. Mot. at 5-6. The Court declines to grant Plaintiffs' motion on those grounds. Any future summary judgment motion will be determined on its merits, not Plaintiffs' predictions.

Plaintiffs' motion for voluntary dismissal without prejudice is accordingly DENIED.

IT IS SO ORDERED.

Dated: May 30, 2014

UNITED STATES DISTRICT JUDGE