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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

ADAM CRONIN,  
Plaintiff,

v.

PACIFIC GAS AND ELECTRIC  
COMPANY,  
Defendant.

Case No. 16-cv-03206-LB

**ORDER OF DISMISSAL**

Re: ECF No. 36

**INTRODUCTION**

The plaintiff moves to voluntarily dismiss this suit.<sup>1</sup> Because the defendant has answered,<sup>2</sup> the case “may be dismissed . . . only by court order,” with or without prejudice, and “on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(1)–(2); *see, e.g., Westlands Water Dist. v. United States*, 100 F.3d 94, 96–97 (9th Cir. 1996). Both parties have consented to magistrate jurisdiction.<sup>3</sup>

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<sup>1</sup> Motion – ECF No. 36. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents. The plaintiff originally asked to dismiss this suit through an *ex parte* application. (*Id.*) The court treated that application as a normal motion and gave the parties the usual opportunity for briefing. *See* (ECF No. 41.)

<sup>2</sup> Answer – ECF No. 1-2 at 4–10; Answer to 1st Am. Compl. – ECF No. 35.

<sup>3</sup> ECF Nos. 8, 13.

1 The court held a hearing on March 31, 2017.<sup>4</sup> The court now grants the plaintiff’s motion and  
2 dismisses this case without prejudice.

3 **STATEMENT**

4 Plaintiff Adam Cronin works for defendant Pacific Gas & Electric (PG&E).<sup>5</sup> In May 2016 Mr.  
5 Cronin filed this lawsuit *pro se* in the Superior Court of California for the County of San  
6 Francisco.<sup>6</sup> He complained of employment discrimination related to his use of leave time for a  
7 “serious health condition.”<sup>7</sup> Citing federal-question jurisdiction under several federal statutes,  
8 PG&E removed the case to this court.<sup>8</sup>

9 The plaintiff has conducted some discovery. He has propounded one set of document requests.  
10 He has not answered written discovery that the defendant propounded. He has not been deposed.  
11 Furthermore, the defendant argues that it needs to depose other witnesses in order to flesh out the  
12 case and begin to prepare its defense.

13 The plaintiff now moves to voluntarily dismiss this suit. He states that he wishes to return to  
14 the administrative-grievance process in the California Department of Fair Employment and  
15 Housing.<sup>9</sup> He explains that, while he was acting without an attorney, he “did not know . . . that he  
16 could have had the Department . . . conduct an investigation rather than proceeding directly to  
17 Superior Court.”<sup>10</sup> “At this point in time, Plaintiff . . . prefers to remediate using . . .  
18 [administrative] procedures rather than to litigate.”<sup>11</sup> He adds that he still wishes to preserve his  
19 career with PG&E.<sup>12</sup>

20 PG&E sees a problem in this. By backing out of this lawsuit now, PG&E argues, the plaintiff  
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22 <sup>4</sup> ECF. No. 46.

23 <sup>5</sup> *See generally* Compl. – ECF No. 1-1 at 3–4 (¶¶ 3–6); 1st Am. Compl. – ECF No. 32 at 2 (¶ 4).

24 <sup>6</sup> Compl. – ECF No. 1-1 at 3.

25 <sup>7</sup> *Id.* at 4 (¶ 6).

26 <sup>8</sup> Notice of Removal – ECF No. 1 at 1–2.

27 <sup>9</sup> ECF No. 36 at 1–2.

28 <sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 1–3.

1 may effectively deny PG&E the benefits of discovery — after the plaintiff has availed himself of  
2 discovery. If the plaintiff were to refile this case in a California state court (bereft, presumably, of  
3 claims that would again support removal to federal court), then PG&E would surely have access to  
4 the usual discovery tools. If, on the other hand, Mr. Cronin returns his grievance to a California  
5 administrative forum (as he says that he prefers to do), then PG&E contends that it will not have  
6 access to the discovery tools that will allow it to investigate this dispute and start preparing its  
7 defense. It thus wants the plaintiff to respond to its outstanding paper discovery, and it wants to  
8 depose the plaintiff, his primary-care physician, and two additional witnesses.

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10 **ANALYSIS**

11 **1. Voluntary Dismissal**

12 Because PG&E has answered, Mr. Cronin cannot voluntarily dismiss this case without court  
13 approval. *See* Fed. R. Civ. P. 41(a)(1)–(2). More specifically, this lawsuit can now be voluntarily  
14 dismissed “only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).  
15 “Unless the order states otherwise,” moreover, “a dismissal under this paragraph (2) is without  
16 prejudice.” *Id.* “When ruling on a motion to dismiss without prejudice, the district court must  
17 determine whether the defendant will suffer some plain legal prejudice as a result of the  
18 dismissal.” *Westlands Water*, 100 F.3d at 96 (citing cases). “Although case law does not articulate  
19 a precise definition of ‘legal prejudice,’ the cases focus on the rights and defenses available to a  
20 defendant in future litigation.” *Id.* at 97.

21 From PG&E’s perspective, the case has persisted on the court’s docket, and the plaintiff has  
22 availed himself of the mechanisms of discovery. But according to the plaintiff, this consisted of  
23 “one set of document requests” and apparently subpoenaing medical records.”<sup>13</sup> PG&E asserts that  
24 it should be allowed some counterpart investigation. It should be allowed to make some initial  
25 inquiry into this case so that it too can start to better understand the circumstances of this dispute

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28 <sup>13</sup> ECF No. 42 at 5. The plaintiff writes that he “facilitated Defendant acquiring medical records through subpoena,” *id.*, but it is unclear what that means.

1 — and thus begin to prepare its defense. If Mr. Cronin takes his grievance back to the state  
2 administrative forum, there appears to be a chance that PG&E will not have access to the same  
3 discovery tools that are a matter of course in judicial forums, and will thereby lose the power to  
4 investigate this dispute in the way that Mr. Cronin has already begun to. The Ninth Circuit has  
5 recognized that prejudice under Rule 41(a)(2) can consist in losing access to discovery. *See*  
6 *Westlands Water*, 100 F.3d at 97.<sup>14</sup>

7 That said, largely for the reasons advanced by the plaintiff at the hearing, the court — in the  
8 exercise of its discretion — concludes that leaving the parties in their pre-litigation positions  
9 would not prejudice PG&E sufficiently that the court will order discovery. The plaintiff began his  
10 lawsuit as a *pro se* litigant, but with counsel, his efforts have been aimed at settlement. Discovery  
11 to date has been modest perhaps because settlement was the aspiration. And the discovery that  
12 PG&E wants appears aimed at state claims that were in the *pro se* plaintiff’s initial complaint (*see*  
13 ECF No. 1-1) but are not in the amended complaint that counsel filed (*see* ECF No. 32). Given the  
14 parties’ ongoing employment relationship and the interactive process that they are pursuing (*see*  
15 ECF No. 42 at 2), discovery here — especially medical discovery — seems invasive and strategic.  
16 The statute of limitations also protects PG&E against serial litigation. Given the circumstances of  
17 this case, the court does not see prejudice to PG&E sufficient to order discovery.

18 The court will therefore grant the plaintiff’s motion to dismiss this case without prejudice.  
19 (The court has considered PG&E’s request to dismiss this case with prejudice but finds that  
20 request unpersuasive.)

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22 **2. Request for Judicial Notice**

23 The plaintiff also asks the court to judicially notice a California state-court form pleading.<sup>15</sup>

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26 <sup>14</sup> “In this circuit, we have stated that a district court properly identified legal prejudice [under Rule  
27 41(a)(2)] when the dismissal of a party would have rendered the remaining parties unable to conduct  
28 sufficient discovery to untangle complex fraud claims and adequately defend themselves against  
charges of fraud.” *Westlands Water*, 100 F.3d at 97 (citing *Hyde & Drath v. Baker*, 24 F.3d 1162, 1169  
(9th Cir. 1994)).

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<sup>15</sup> ECF No. 37.

1 Specifically, Mr. Cronin asks the court to notice a form “Request for Dismissal” of a case that  
2 carries the state-court caption and case number of this lawsuit; the form has been mostly  
3 completed, and has been signed by the plaintiff’s attorney, but has not been filed.<sup>16</sup> Mr. Cronin  
4 asks the court to “judicially notice the . . . form as one that would be effective to dismiss in San  
5 Francisco Superior Court without Defendant’s permission or stipulation.”<sup>17</sup> The suggestion being  
6 that the plaintiff could dismiss, and perhaps would have dismissed, the state-court lawsuit had  
7 PG&E not “removed the action to federal court.”<sup>18</sup>

8 The court partly grants the request for judicial notice. The court notices the form as one used  
9 for voluntary dismissals in the Superior Court of California. The form itself says that it has been  
10 “Adopted for Mandatory Use” by the “Judicial Council of California.”<sup>19</sup> (The latter council is the  
11 “policymaking body” of the California judicial branch.<sup>20</sup>) The court does *not* judicially notice  
12 whether in this case this form would successfully effect a dismissal from the state trial court. That  
13 seems a matter for legal argument. It is an uncomplicated question, maybe, but it is not one that  
14 can be summarily resolved, and by the shortcut of judicial notice, from the face of this form.

15 \* \* \*

16 **CONCLUSION**

17 The plaintiff’s motion is granted. The court will dismiss this case without prejudice.

18 **IT IS SO ORDERED.**

19 Dated: April 3, 2017



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22 LAUREL BEELER  
23 United States Magistrate Judge  
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25 <sup>16</sup> *See id.*

26 <sup>17</sup> *Id.* at 1.

27 <sup>18</sup> *See id.*

28 <sup>19</sup> *Id.* at 3.

<sup>20</sup> <http://www.courts.ca.gov/policyadmin-jc.htm> (last accessed on March 28, 2017).