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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DCI SOLUTIONS INC., a California  
corporation,  
  
Plaintiff,  
  
vs.  
  
URBAN OUTFITTERS, INC., a  
Pennsylvania corporation, and Does 1-20,  
  
Defendants.

CASE NO. 10cv0369 - IEG (BGS)  
  
**ORDER GRANTING  
DEFENDANT AND  
COUNTERCLAIMANT URBAN'S  
MOTION TO DISMISS ITS  
REMAINING COUNTERCLAIMS**  
  
[Doc. No. 125]

**AND RELATED COUNTER CLAIMS.**

Presently before the Court is Defendant and Counterclaimant Urban Outfitters, Inc. (“Urban”)’s motion to dismiss its remaining equitable counterclaims without prejudice pursuant to Federal Rule of Civil Procedure 41(a). [Doc. No. 125.] For the reasons below, the Court **GRANTS** Urban’s motion.

**BACKGROUND**

This case arises out of a contract dispute between Plaintiff and Counterdefendant DCI Solutions Inc. (“DCI”) and Urban. The factual background of this action is forth in detail in this Court’s prior order granting in part and denying in part Urban’s motion for summary judgment and need not be repeated herein. [See Doc. No. 60.]

On January 25, 2010, DCI filed this action in San Diego County superior court. [Doc. No.

1 1, Compl.] On February 16, 2010, Urban removed the action to this Court on the basis of diversity  
2 jurisdiction. [Doc. No. 1, Notice of Removal.] In its complaint, DCI asserted four causes of  
3 action against Urban for (1) fraud in the inducement, (2) breach of contract, (3) breach of the  
4 implied covenant of good faith and fair dealing, and (4) *quantum meruit*. [Compl.] On May 25,  
5 2010, Urban filed an amended answer and counterclaims against DCI for (1) fraud in the  
6 inducement; (2) fraud; (3) breach of contract; (4) violation of California Business and Professions  
7 Code §§ 17200 et. seq.; (5) declaratory relief; and (6) rescission. [Doc. No. 25.]

8 Beginning on September 6, 2011, the Court held a jury trial on all of DCI's claims and on  
9 Urban's fraud and breach of contract counterclaims. On September 16, 2011, the jury returned a  
10 verdict in favor of Urban on all of DCI's claims and in favor of DCI on Urban's fraud and breach  
11 of contract counterclaims. [Doc. No. 116.] Following the verdict, the Court ordered Urban to file  
12 any motions related to its three remaining equitable counterclaims for violation of California  
13 Business and Professions Code §§ 17200 et. seq., declaratory relief, and rescission by September  
14 26, 2011. [Doc. No. 115.] By the present motion, Urban seeks to dismiss these three remaining  
15 counterclaims without prejudice pursuant to Federal Rule of Civil Procedure 41(a). [Doc. No.  
16 125.]

### 17 DISCUSSION

18 Urban requests that the Court dismiss its fourth, fifth and sixth counterclaims without  
19 prejudice. [Doc. No. 125.] DCI opposes this dismissal on two grounds. [Doc. No. 126.] First,  
20 DCI argues that the Court should dismiss these counterclaims with prejudice, so DCI does not  
21 have to face the possibility of having to defend against these counterclaims in subsequent  
22 litigation. [Id. at 2-3.] Second, DCI argues that if the Court dismisses the counterclaims without  
23 prejudice, the Court should order Urban to pay DCI's attorneys' fees and costs in any subsequent  
24 litigation involving those counterclaims. [Id. at 3-4.]

25 Rule 41(a) of the Federal Rules of Civil Procedure governs the voluntary dismissal of an  
26 action in federal court. Rule 41(a)(2) provides that unless a plaintiff files a notice of dismissal  
27 before the opposing party serves either an answer or a motion for summary judgment, or the  
28 parties stipulate to the dismissal of the action, "an action may be dismissed at the plaintiff [or

1 counterclaimant]’s request only by court order, on terms that the court considers proper.” FED. R.  
2 Civ. P. 41(a)(2). The decision to grant or deny a motion pursuant to Rule 41(a)(2) is within the  
3 sound discretion of the district court and may be reviewed only for abuse of that discretion. Sams  
4 v. Beech Aircraft Corp., 625 F.2d 273, 277 (9th Cir. 1980). A court should grant a Rule 41(a)(2)  
5 motion for voluntary dismissal unless the defendant/counterdefendant will “suffer clear legal  
6 prejudice, other than the prospect of a subsequent suit on the same facts.” Phillips v. Illinois  
7 Central Gulf Railroad, 874 F.2d 984, 986 (9th Cir. 1989). The Ninth Circuit interprets “legal  
8 prejudice” to mean “prejudice to some legal interest, some legal claim, some legal argument.”  
9 Westlands Water Dist. v. United States, 100 F.3d 94, 96 (9th Cir. 1996).

10 To protect the defendant’s interests when a dismissal is without prejudice, a court can  
11 condition a dismissal upon the payment of “appropriate costs and attorney fees.” Westlands  
12 Water, 100 F.3d at 97. However, the “[i]mposition of costs and fees as a condition for dismissing  
13 without prejudice is not mandatory.” Id.; accord. Stevedoring Servs. of Am. v. Armilla Intern.  
14 B.V., 889 F.2d 919, 921 (9th Cir. 1989). Further, the Ninth Circuit has held that “Fed. R. Civ. P.  
15 41(a)(2) in itself is not ‘specific statutory authority’ for the imposition of sanctions against an  
16 attorney.” Heckethorn v. Sunan Corp., 992 F.2d 240, 242 (9th Cir. 1993). “Given the  
17 presumption that an attorney is generally not liable for fees unless that prospect is spelled out, it  
18 would be incongruous to conclude from the broad language of Fed. R. Civ. P. 41(a)(2) that an  
19 attorney could be sanctioned by authority of this rule alone.” Id. at 242; see also Int’l Union of  
20 Petroleum & Indus. Workers v. Western Indus. Maintenance, Inc., 707 F.2d 425, 428 (9th Cir.  
21 1983) (“[A]bsent contractual or statutory authorization, a prevailing litigant ordinarily may not  
22 collect attorneys’ fees.”). “Thus, the district court must have an independent basis to impose fees  
23 and costs as a condition of voluntary dismissal.” Chavez v. Northland Group, 2011 U.S. Dist.  
24 LEXIS 10113, at \*10 (D. Ariz. Feb 1, 2011); accord. Chang v. Pomeroy, 2011 U.S. Dist. LEXIS  
25 13806, at \*2 (E.D. Cal. Feb. 10, 2011) (“[A] court cannot impose fees and costs as a condition of  
26 voluntary dismissal absent some basis other than the mere fact of the plaintiff’s request for Rule  
27 41(a)(2).”).

28 DCI argues that the Court should exercise its discretion and dismiss the remaining

1 counterclaims with prejudice. [Doc. No. 126 at 2-3.] In support of this argument, DCI fails to  
2 point to any prejudice it would suffer by a dismissal without prejudice other than the prospect of  
3 facing a future lawsuit. [See id. at 2. (“DCI will suffer prejudice if Urban’s remaining claims are  
4 dismissed without prejudice. Namely, DCI faces the possibility of having to defend claims it has  
5 already defeated.”).] The Ninth Circuit has stated that “the prospect of a subsequent suit on the  
6 same facts” is insufficient to establish “legal prejudice.” Phillips, 874 F.2d at 986; see also  
7 Westland Waters, 100 F.3d at 96 (“[T]he threat of future litigation which causes uncertainty is  
8 insufficient to establish plain legal prejudice.”). Therefore, DCI has not shown that it will suffer  
9 clear legal prejudice. See id.

10 DCI also argues that the Court should dismiss these counterclaims with prejudice because  
11 Urban has failed to explain why the counterclaims should be dismissed without prejudice. [Doc.  
12 No. 126 at 3.] Urban has provided a sufficient explanation of its reason for seeking dismissal  
13 without prejudice. It explains that DCI contends that the contract at issue has a three-year window  
14 for compensation that is still ongoing. [Doc. No. 127 at 2.] Therefore, DCI might attempt to  
15 assert claims against Urban for compensation based on the contract in the future. [Id.]  
16 Accordingly, because DCI has not shown that it will suffer clear legal prejudice, and Urban has  
17 provided an explanation for its request, the Court **DISMISSES WITHOUT PREJUDICE**  
18 Urban’s remaining equitable counterclaims. See Phillips, 874 F.2d at 986

19 In addition, the Court declines to condition the dismissal on the payment of attorney’s fees  
20 and costs in any subsequent litigation. First, DCI has provided no basis for the award of attorney’s  
21 fees other than Rule 41(a)(2). Rule 41(a)(2) is not itself authority for the imposition of attorney’s  
22 fees, and the Court must have an independent basis to condition the dismissal of the counterclaims  
23 on the award of attorney’s fees. See Heckelthorn, 992 F.2d at 242; Chavez, 2011 U.S. Dist.  
24 LEXIS 10113, at \*10; Chang, 2011 U.S. Dist. LEXIS 13806, at \*2. DCI has provided no statutory  
25 authority or contractual provision providing for the award of attorney’s fees, and DCI has  
26 presented no evidence showing that Urban has “acted in bad faith, vexatiously, wantonly, or for  
27 oppressive reasons.” Alyeska Pipeline Serv. Co. v. Wilderness Soc’y, 421 U.S. 240, 258-59  
28 (1975). Further, all the cases that the Court has reviewed have only conditioned dismissal on an


1 award of attorney's fees for the present action not subsequent litigation. See Koch v. Hankins, 8  
2 F.3d 650, 652 (9th Cir. 1993) (explaining that a defendant is only entitled to recover, as a  
3 condition of dismissal, costs for work in the present action that will not be useful in subsequent  
4 litigation). DCI has not presented the Court with any case where a court conditioned dismissal on  
5 an award of attorney's fees in future litigation. If Urban does eventually bring DCI back to court  
6 on these counterclaims and DCI believes that the subsequent litigation is frivolous or in bad faith,  
7 DCI can seek an award of attorney's fees in that action. See Alyeska Pipeline, 421 U.S. at 258-59;  
8 see also FED. R. CIV. P. 41(d).

9 **CONCLUSION**

10 For the reasons above, the Court **GRANTS** Urban's motion and **DISMISSES WITHOUT**  
11 **PREJUDICE** Urban's fourth, fifth and sixth counterclaims for violation of California Business  
12 and Professions Code §§ 17200 et seq., declaratory relief, and rescission.

13 **IT IS SO ORDERED.**

14 **DATED:** December 1, 2011

  
15 **IRMA E. GONZALEZ, Chief Judge**  
16 **United States District Court**

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