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

10 PAUL STELLA,

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12 Plaintiff,

13 v.

14 JP MORGAN CHASE BANK,
15 NATIONAL ASSOCIATION, et al.,

16 Defendants.

Case No.: 15cv2673-MMA (BLM)

**ORDER GRANTING MOTION FOR
VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

[Doc. No. 27]

17 Plaintiff Paul Stella has filed a motion for voluntary dismissal without prejudice
18 pursuant to Federal Rule of Civil Procedure 41(a)(2). Doc. No. 27. Defendants JP
19 Morgan Chase Bank, National Association (“Chase”), Select Portfolio Servicing, Inc.
20 (“Select Portfolio”) and U.S. Bank National Association (“U.S. Bank”) oppose voluntary
21 dismissal on grounds of judicial economy. Doc. Nos. 33, 34. Plaintiff replies that the
22 potential inconvenience of another lawsuit is not sufficient legal prejudice to warrant
23 denial of his motion. Doc. No. 35. The Court determined the matter suitable for decision
24 on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the
25 reasons set forth below, the Court **GRANTS** Plaintiff’s motion (Doc. No. 27).

26 **BACKGROUND**

27 Plaintiff filed suit against Defendants alleging several causes of action arising from
28 foreclosure-related events concerning Plaintiff’s home. On November 30, 2015,

1 Defendants Select Portfolio and U.S. Bank removed the case to federal court. Doc. No.
2 1. Defendant Chase filed a motion to dismiss for failure to state a claim on December 7,
3 2015. Doc. No. 6. Defendants Select Portfolio and U.S. Bank answered. Doc. No. 8.
4 On December 30, 2015, Plaintiff filed a motion to remand. Doc. No. 11. On January 27,
5 2016, Plaintiff filed the instant motion for voluntary dismissal. Doc. No. 27. On
6 February 29, 2016, Plaintiff filed a motion for leave to amend the complaint. Doc. No.
7 36. All of Plaintiff's motions remain pending before the Court.

8 DISCUSSION

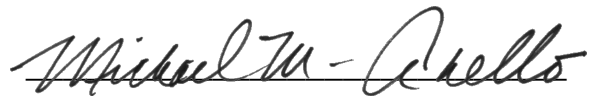
9 Unless all parties stipulate to dismissal, after service of an answer a plaintiff may
10 only voluntarily dismiss an action with the court's approval. *See* Fed. R. Civ. P. 41(a).
11 "In ruling on a motion for voluntary dismissal, the District Court must consider whether
12 the defendant will suffer some plain legal prejudice as a result of the dismissal. Plain
13 legal prejudice, however, does not result simply when defendant faces the prospect of a
14 second lawsuit or when plaintiff merely gains some tactical advantage." *Hamilton v.*
15 *Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982) (citations omitted); *see*
16 *also Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996) ("[T]he
17 threat of future litigation which causes uncertainty is insufficient to establish plain legal
18 prejudice.").

19 Defendants oppose Plaintiff's motion for voluntary dismissal because they believe
20 Plaintiff seeks to dismiss "for the express purpose of then commencing a second action
21 against the same defendants, but without a RICO claim and with the addition of a new
22 defendant, so that he may purportedly sidestep this Court's jurisdiction." Doc. No. 33.
23 Defendants contend that the addition of the new, non-diverse defendant would
24 nevertheless not defeat diversity jurisdiction, and note that Chase's motion to dismiss has
25 already been taken under submission by the Court. Although the Court notes that
26 Plaintiff's pending motion to remand is without merit for reasons it need not address
27 here, Defendants have identified no legal prejudice that will result from granting
28 Plaintiff's motion for voluntary dismissal. *See Westlands Water Dist.*, 100 F.3d at 97

1 (“[L]egal prejudice is just that—prejudice to some legal interest, some legal claim, some
2 legal argument. Uncertainty because a dispute remains unresolved is not legal
3 prejudice.”). The Court declines to speculate as to whether or not Plaintiff will ultimately
4 file another lawsuit in state court, and, if so, whether removal of that case to federal court
5 will be appropriate. Accordingly, the Court **GRANTS** Plaintiff’s motion, and
6 **DISMISSES** this matter without prejudice, Doc. No. 27.

7 **IT IS SO ORDERED.**

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9 Dated: April 14, 2016

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11 Hon. Michael M. Anello
12 United States District Judge
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