

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KARI AYERS et al.,

Plaintiffs,

vs.

SARSTEDT, INC.,

Defendant.

3:16-cv-00275-RCJ-WGC

**ORDER**

This case arises out of alleged violations of Nevada’s wage and hour laws. Pending before the Court is a Motion for Attorney Fees (ECF No. 14). For the reasons given herein, the Court denies the motion.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiffs Kari Ayers and Katrina Markussen filed this action in state court on April 28, 2016. Defendant Sarstedt, Inc. (“Sarstedt”) removed to this Court on May 23, 2016 and filed a motion for partial dismissal the same day. On May 24, 2016, Plaintiffs filed a motion to remand and a motion to stay Sarstedt’s motion to dismiss. Sarstedt filed responses to those motions on June 9, 2016 and June 10, 2016. On June 20, 2016, Plaintiffs filed a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A), which the Court approved on June 21, 2016.

1 Plaintiffs make the following claims: (1) constructive discharge; (2) failure to pay  
2 minimum wages in violation of the Nevada Constitution; (3) failure to timely pay all wages upon  
3 termination in violation of NRS 608.140 and NRS 608.030-.050; and (4) failure to pay overtime  
4 compensation. Sarstedt moves the Court to order Plaintiffs to pay attorney fees and costs  
5 following Plaintiffs' voluntary dismissal.

## 6 **II. LEGAL STANDARDS**

7 Courts generally consider four factors in determining whether to award costs to a  
8 defendant after a voluntary dismissal without prejudice: "(1) any excessive and duplicative  
9 expense of a second litigation; (2) the effort and expense incurred by a defendant in preparing for  
10 trial; (3) the extent to which the litigation has progressed; and (4) the plaintiff's diligence in  
11 moving to dismiss." Williams v. Peralta Cmty. Coll. Dist., 227 F.R.D. 538, 540 (N.D. Cal. 2005)  
12 (footnote omitted) (quoting 8-41 Moore's Fed. Prac.-Civ. § 41.40[10][d][I]). A court may order  
13 a plaintiff to "to pay all or part of the costs of [a] previous action" when a plaintiff has  
14 "previously dismissed an action in any court [and] files an action based on or including the same  
15 claim against the same defendant." Fed. R. Civ. P. 41(d).

## 16 **III. ANALYSIS**

17 Sarstedt moves the Court to order Plaintiffs to pay attorney fees and costs based on the  
18 factors in Williams. First, Sarstedt notes that on July 11, 2016 Plaintiffs filed a second suit in  
19 state court with identical claims and parties and some minor changes to avoid removal. (See  
20 Suppl. Br., 3, ECF No. 16). Sarstedt argues that this second suit will result in duplicative  
21 expenses and costs. While this may be true, when a plaintiff voluntarily dismisses a case, a  
22 defendant is entitled to recover only "attorneys fees or costs for work which is not useful in  
23 continuing litigation between the parties." Koch v. Hankins, 8 F.3d 650, 652 (9th Cir. 1993).

1 Here, the complaint in the second case appears to be nearly identical to the complaint in this  
2 case; thus, any work Sarstedt's counsel performed for this case will be very useful in the second  
3 case. For example, Sarstedt describes Plaintiffs' new complaint as "a vain attempt to avoid  
4 removal," (Suppl. Br., 3), which means its work to remove this case and argue against remand  
5 will likely not be wasted, nor will its motion to dismiss.

6 Second, Sarstedt has incurred relatively little effort and expense, if any, to prepare for  
7 trial as the case is still in its initial stages. Third, litigation in the case has not progressed much at  
8 all; the Court has not ruled on the motions to remand or dismiss. Sarstedt blames the lack of  
9 progress on Plaintiffs' conduct, but the Court finds no reason to believe Plaintiffs have used  
10 delay tactics or have been inexcusably unresponsive. Fourth, Sarstedt argues that Plaintiffs were  
11 not diligent in moving to dismiss because they did not voluntarily dismiss the case until June 20,  
12 2016, almost a month after Sarstedt filed its motion to dismiss. The Court disagrees. Federal  
13 Rule of Civil Procedure 41(a)(1)(A)(i) requires a plaintiff to file a notice of voluntary dismissal  
14 "before the opposing party serves either an answer or a motion for summary judgment"; it does  
15 not place any other time-specific restraints on a voluntary dismissal. Here, Plaintiffs filed their  
16 notice of voluntary dismissal less than a month after the case was removed and before Sarstedt  
17 filed an answer or motion for summary judgment. During the interim, both parties were engaged  
18 in filing various motions and responses. The Court finds that Plaintiffs did not unnecessarily  
19 delay the filing of their notice of voluntary dismissal.

20 Sarstedt also argues that Plaintiffs are acting maliciously in prosecuting their case and  
21 forum shopping to avoid the application of this Court's holding in a prior case. Sarstedt makes  
22 several inferences to draw these conclusions, but it provides no evidence to show its accusations  
23 are true. Also, Sarstedt argues that Rule 41(d) allows the Court to order Plaintiffs to pay fees and  
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1 costs because Plaintiffs have filed a subsequent suit in state court; however, Rule 41(d) applies to  
2 cases in which a plaintiff has filed and dismissed a case prior to the case at bar. Here, Plaintiffs  
3 filed a case after this case, not prior to it; thus, Rule 41(d) does not apply. If Sarstedt removes  
4 Plaintiffs' second case to federal court, then Sarstedt might argue in the second case that under  
5 Rule 41(d) the court should order fees and costs for this case.

6 Finally, as Plaintiffs point out, Local Rule 54-14 requires a party moving for attorney fees  
7 to provide "[a] reasonable itemization and description of the work performed" and "of all costs  
8 sought to be charged," L.R. 54-14(b)(1)-(2), and a brief summary of various items involving the  
9 request, L.R. 54-14(b)(3). Even if the Court were to agree with Sarstedt's arguments, the  
10 information Sarstedt has provided would not allow the Court to adequately assess the  
11 reasonableness of the request for attorney fees and costs. Sarstedt only provides the number of  
12 hours its attorneys have worked on the case and their hourly rates; it provides no itemization of  
13 fees and costs or a summary as required under subsection (b)(3).

14 Sarstedt has not shown that it is entitled to attorney fees and costs. The Court denies the  
15 motion.

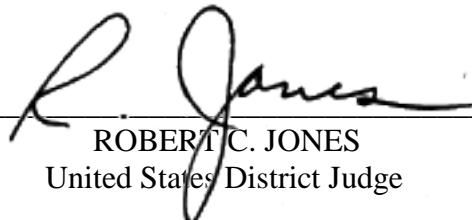
### 16 CONCLUSION

17 IT IS HEREBY ORDERED that the Motion for Attorney Fees (ECF No. 14) is DENIED.

18 IT IS FURTHER ORDERED that the Motion for Leave to File Supplemental Brief (ECF  
19 No. 16) is GRANTED.

20 IT IS SO ORDERED.

21 Dated this 29th day of August, 2016.

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ROBERT C. JONES  
United States District Judge