

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ENVISION PHARMACEUTICAL)	CASE NO. 5:16-cv-2370
SERVICES, LLC,)	
)	
PETITIONER,)	JUDGE SARA LIOI
)	
vs.)	MEMORANDUM OPINION
)	AND ORDER
HORIZON PHARMA USA, INC.,)	
)	
RESPONDENT.)	

Before the Court is the motion to dismiss of respondent Horizon Pharma USA, Inc. (“respondent” or “Horizon”). (Doc. No. 10.) Horizon argues that diversity jurisdiction is lacking. Petitioner Envision Pharmaceutical Services, LLC (“petitioner” or “Envision”) filed its response, indicating that it would not oppose an order dismissing this case without prejudice. (Doc. No. 12.) Horizon’s reply (Doc. No. 13) criticizes Envision for failing to supply any information from which it or the Court can determine Envision’s citizenship. The reply also indicates that, if dismissal is granted, Horizon intends to seek statutory costs pursuant to 28 U.S.C. §§ 1919 and 1920. (*Id.* at 177.)¹

This reply triggered a motion by Envision, which is granted, for leave to file instant a sur-reply (styled as a “response”) “to clarify the basis on which it requests the Court to dismiss” its petition. (Doc. No. 14 at 182.) In the sur-reply, Envision indicates that it is an Ohio limited liability company whose sole member is a Delaware limited liability company. Given that Horizon is also a Delaware corporation, Envision admits that this Court lacks diversity

¹ All page number references are to the page identification number generated by the Court’s electronic docketing system.

jurisdiction. That said, the sur-reply also asserts an argument as to why Horizon should not be entitled to fees and costs as a condition of dismissal without prejudice.

The Court will grant the motion to dismiss without prejudice. It is premature, however, to decide whether Horizon would be entitled to fees and/or costs, and such entitlement would not be a foregone conclusion merely because Envision filed a case that lacked diversity jurisdiction. If Horizon files a post-judgment motion for statutory costs, the Court will take it under advisement after briefing. It is the Court's hope, however, that the parties will reach a mutually satisfactory resolution to the issue of the propriety of fees without the need for Court involvement.

IT IS SO ORDERED.

Dated: December 9, 2016



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE