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10 MESRURE SEKENDUR,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.

No. 2:14-cv-00121 RSM

ORDER GRANTING MOTION TO DISMISS
WITHOUT PREJUDICE

15
16 This matter comes before the Court on Motion for Dismissal without Prejudice by Plaintiff
17 Mesrure Sekendur. Dkt. # 8. Plaintiff seeks to voluntarily dismiss her lawsuit pursuant to Federal Rule
18 of Civil Procedure 41(a)(2) in order to litigate her claims in a different venue. Defendant does not
19 oppose the relief sought by Plaintiff but “leaves it to the Court’s discretion to determine whether to
20 impose terms on the dismissal.” Dkt. # 9, p. 3.

21 Federal Rule of Civil Procedure 41(a)(2) provides that after a defendant serves either an
22 answer or motion for summary judgment, and absent stipulation of dismissal by the parties, “an action
23 may be dismissed at the plaintiff’s request only by court order, on terms that the court considers
24 proper.” Fed. R. Civ. P. 41(a)(2). “When ruling on a motion to dismiss without prejudice, the district
25 court must determine whether the defendant will suffer some plain legal prejudice as a result of the
26 dismissal.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996). Legal prejudice

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE - 1

1 means “prejudice to some legal interest, some legal claim, some legal argument.” *Id.* at 97. Prejudice
2 does not exist simply because a suit remains unresolved. *Id.* Nor does it exist on account of the
3 prospect that defendant will face a second lawsuit, where the plaintiff stands to gain a tactical
4 advantage, or due to trial preparations or substantial expense incurred by the defendant. *See Hamilton*
5 *v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145-46 (9th Cir. 1982).

6 Defendant does not explicitly contend that it will be prejudiced should the Court grant the
7 relief requested by Plaintiff. Rather, Defendant alerts the Court that Plaintiff pursued this action for
8 seven months while her son pursued a motion seeking identical relief before the Northern District of
9 Illinois. *See* Dkt. # 9. Defendant is accordingly “concerned by the fact that Mrs. Sekendur and her son
10 have already wasted judicial resources by simultaneously seeking the same relief in this Court and the
11 [Northern District of Illinois], respectively.” *Id.* at p. 3.

12 Defendant’s concern is not sufficient to warrant denial of Plaintiff’s motion or the imposition
13 of conditions. Neither this Court nor the Northern District of Illinois has reached the merits of
14 Plaintiff’s claim, *see* Dkt. # 10, Ex. 3, and Defendant does not face the loss of a statute-of-limitations
15 defense, a federal forum, or some other legal interest which could amount to legal prejudice. *See*
16 *Westlands*, 100 F.3d at 97. While the Court may condition dismissal on payment of appropriate costs
17 and fees, *id.*, the fact that no discovery and no motions practice has yet been undertaken in this
18 proceeding militates against the imposition of such conditions. *Cf. Mitchell-Jones v. Menzies Aviation,*
19 *Inc.*, 2011 WL 3273221 (W.D. Wash. 2011) (conditioning voluntary dismissal where the matter had
20 been pending for more than a year and the parties had pursued considerable discovery and motions
21 practice). Further, Defendant has not shown that any work involved in defending against this suit
22 could not be used in any future litigation of the dismissed claims. *See Westlands*, 100 F.3d at 97
23 (cautioning that “defendants should only be awarded attorney fees for work which cannot be used in
24 any future litigation of these claims”).

1 Accordingly, for the above-stated reasons, the Court hereby ORDERS that Plaintiff's Motion
2 for Dismissal without Prejudice (Dkt. # 8) is GRANTED. This action is dismissed without prejudice
3 and without imposition of conditions.

4 DATED this 2 day of December 2014.

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6 RICARDO S. MARTINEZ
7 UNITED STATES DISTRICT JUDGE
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