

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 EDMUND OKOLIE,

11 Plaintiff,

12 v.

13 CITY OF SEATTLE, SEATTLE
14 POLICE DEPARTMENT,

15 Defendants.
16

CASE NO. C15-1258 RAJ

ORDER

17 This matter comes before the Court on Plaintiff's Motion for Voluntary Dismissal
18 without Prejudice. Dkt. # 37. Defendants oppose the motion and request that the Court
19 consider dismissal based on Defendants' motion to dismiss. Dkt. ## 38, 40. The Court
20 **GRANTS** Plaintiff's motion on the conditions described in this Order.

21 **I. INTRODUCTION**

22 Plaintiff brought this civil rights action against Defendants after an encounter with
23 Seattle police officers. In November 2016, the Court denied Plaintiff's motion to amend
24 his complaint to add officers to the lawsuit. Dkt. # 35. At the same time, the Court
25 granted Defendants' motion to compel Plaintiff to respond to discovery requests. Dkt. #
26 34. Plaintiff failed to respond by the court-ordered deadline and instead filed a summary
27 motion for voluntary dismissal wherein he merely cited to CR 41(a). Dkt. # 37.

1 **II. LEGAL STANDARD**

2 Pursuant to Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an
3 action without a court order by filing: (1) a notice of dismissal prior to a defendant’s
4 service of an answer or motion for summary judgment or (2) a stipulation of dismissal
5 signed by all appearing parties. Federal Rule of Civil Procedure 41(a)(2) provides that in
6 all other circumstances, “an action may be dismissed at the plaintiff’s request only by
7 court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

8 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2)
9 unless a defendant can show that it will suffer some plain legal prejudice as a result.”
10 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) (citing *Waller v. Fin. Corp. of Am.*,
11 828 F.2d 579, 583 (9th Cir. 1987)). “Plain legal prejudice is not merely the prospect of
12 another lawsuit. Plain legal prejudice means prejudice to some legal interest, legal claim,
13 or legal argument.” *BP W. Coast Prods. LLC v. SKR Inc.*, 989 F. Supp. 2d 1109, 1116
14 (W.D. Wash. 2013) (citing *Smith*, 263 F.3d at 975) (internal citations omitted). Other
15 forms of prejudice are insufficient, including uncertainty over an unresolved dispute,
16 delay in resolving a dispute, and undue expense. *See Westlands Water Dist. v. United*
17 *States*, 100 F.3d 94, 96-97 (9th Cir. 1996). “The decision to grant a voluntary dismissal
18 under Federal Rule of Civil Procedure 41(a)(2) is addressed to the sound discretion of the
19 district court.” *Navellier v. Sletten*, 262 F.3d 923, 938 (9th Cir. 2001).

20 **III. DISCUSSION**

21 Defendants’ main argument in opposition is that Plaintiff’s motion is a “thinly
22 veiled attempt to avoid discovery.” Dkt. # 38 at p. 5. Defendants cite to *In re Exxon*
23 *Valdez*, 102 F.3d 429 (9th Cir. 1996), for authority on this point. Despite acknowledging
24 that the factual premise in *Exxon Valdez* is distinct from this matter, Defendants do not
25 account for that court’s list of reasons for denying the motion for voluntary dismissal.
26 That the court found the motion to be a thinly veiled attempt to avoid discovery—a point
27 that was undisputed by the moving party—was one of several factors in its decision. *Id.*

1 at 432. There is no authority to show that this factor, standing alone, evidences sufficient
2 legal prejudice such that a court must deny a voluntary motion to dismiss.

3 Defendants did not carry their burden to show that they are prejudiced by
4 Plaintiff's voluntary dismissal. To be sure, Defendants also cited to the time and effort
5 already expended in defending the action. These are not sufficient reasons to deny the
6 motion. *See Westlands*, 100 F.3d at 96-97.

7 In the alternative, Defendants ask the Court to attach certain conditions to an order
8 that grants Plaintiff's voluntary dismissal. Dkt. # 38 at p. 6. The Court is permitted to do
9 so. *Westlands*, 100 F.3d at 97-98. Defendants' requests are reasonable, and the Court
10 conditions this dismissal on allowing any discovery in this action to be used in any
11 subsequent action brought by this Plaintiff against these Defendants. In addition, if
12 Plaintiff brings a subsequent similar action against Defendants, then this Court's current
13 orders will remain in effect in the subsequent matter.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court **GRANTS** Plaintiff's motion for voluntary
16 dismissal without prejudice with the attached conditions as described in this Order. Dkt.
17 # 37. This Order acts to terminate Defendants' motion to dismiss as that motion is now
18 **MOOT**. Dkt. # 40.

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20 Dated this 24th day of January, 2017.

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24 The Honorable Richard A. Jones
25 United States District Judge
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