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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 ROBERT HUNTER BIDEN, an
16 individual,
17 Plaintiff,
18 vs.
19 GARRETT ZIEGLER, an individual,
ICU, LLC, a Wyoming Limited
20 Liability Company d/b/a Marco Polo,
21 and DOES 1 through 10, inclusive,
22 Defendants.

Case No. 2:23-cv-07593-HDV-KS

*Assigned to:
District Judge Hernán D. Vera*

**PLAINTIFF ROBERT HUNTER
BIDEN'S NOTICE OF EX PARTE
APPLICATION FOR AN ORDER
AND EX PARTE APPLICATION
FOR AN ORDER TO
VOLUNTARILY DISMISS ACTION
PURSUANT TO FED. RULE CIV.
PROC. 41(a)(2)**

*[Declarations of Robert Hunter Biden
and Bryan M. Sullivan, Esq.; and
[Proposed] Order filed and served
concurrently herewith]*

Place: Ctrm. 5B
Judge: Hon. Honorable Hernan D. Vera

1 **TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS**
2 **OF RECORD:**

3 **PLEASE TAKE NOTICE** that Plaintiff Robert Hunter Biden (“Plaintiff”), by
4 and through his attorneys of record, hereby applies *Ex Parte* to this Court for an Order
5 voluntarily dismissing this case pursuant to Rule 41(a)(2). Plaintiff respectfully
6 requests that this *Ex Parte* Application be resolved on the papers, without oral
7 argument, in Courtroom 5B before District Court Judge Vera. This application is
8 being made on the basis that good cause exists to grant this Application because
9 Plaintiff does not have the resources to continue to litigate this matter. Plaintiff has
10 suffered a significant downturn in his income and has significant debt in the millions
11 of dollars range. Moreover, this lack of resources has been exacerbated after the fires
12 in the Pacific Palisades in early January upended Plaintiff’s life by rendering his rental
13 house unlivable for an extended period of time and, like many others in that situation,
14 Plaintiff has had difficulty in finding a new permanent place to live as well as finding
15 it difficult to earn a living. So, Plaintiff must focus his time and resources dealing with
16 his relocation, the damage he has incurred due to the fires, and paying for his family’s
17 living expenses as opposed to this litigation.

18 Exigent circumstances and good cause justify the *ex parte* relief sought herein
19 because the fact discovery cut-off is April 1, 2025 and the Parties have not taken any
20 depositions in this matter and if this relief were sought via a noticed motion on the
21 statutory notice timeline, it would be mid-April before a resolution is reached, which
22 would be after the non-expert discovery cut-off and the Parties would incur significant
23 fees dealing with discovery issues that may not be necessary if this Application is
24 granted on an *ex parte* basis.

25 On the morning of March 5, 2025, Plaintiff’s counsel provided Notice of this
26 *ex parte* application to Defendants’ counsel by telephone and email, as required by
27 the Central District of California Local Rules and the Court’s Civil Standing Order

28 ///



1 (Dkt. No. 13). In prior correspondence notifying Defendant’s counsel of the same on
2 March 4, 2025, Defendants’ counsel indicated that Defendant’s would oppose this
3 application.

4 This application is based upon the accompanying Memorandum of Points and
5 Authorities, the declaration of Robert Hunter Biden and Bryan M. Sullivan, as well
6 as all exhibits filed concurrently herewith, the pleadings and other documents on file
7 with the Court, oral argument at the time of the hearing, and upon such further matters
8 that the Court may consider in ruling on this Motion.

9
10 Dated: March 5, 2025

EARLY SULLIVAN WRIGHT
GIZER & MCRAE LLP

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*Attorneys for Plaintiff
Robert Hunter Biden*



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this motion, Plaintiff Robert Hunter Biden (“Plaintiff”) requests that the
4 Court dismiss this action pursuant to Rule 41(a)(2) of the Federal Rules of Civil
5 Procedure. While Plaintiff had factual and legal basis to bring and maintain this
6 action, especially considering Defendants Garrett Ziegler’s and ICU, LLC d/b/a
7 Marco Polo’s (collectively, “Defendants”) admissions that they hacked Plaintiff’s
8 iCloud, Plaintiff does not have the resources to continue to litigate this matter.
9 (Declaration of Robert Hunter Biden (“Biden Decl.”) at ¶ 2). Plaintiff has suffered a
10 significant downturn in his income over the past 18 months with reduced book and
11 art sales, which has been his main source of income over the prior years. (Biden
12 Decl., at ¶ 3). In addition, Plaintiff has significant debt in the millions of dollars range.
13 (Biden Decl., at ¶ 4). Moreover, this lack of resources has been exacerbated after the
14 fires in the Pacific Palisades in early January upended Plaintiff’s life by rendering his
15 rental house unlivable for an extended period of time and, like many others in that
16 situation, Plaintiff has had difficulty in finding a new permanent place to live as well
17 as finding it difficult to earn a living. (Biden Decl., at ¶ 5). So, Plaintiff must focus
18 his time and resources dealing with his relocation, the damage he has incurred due to
19 the fires, and paying for his family’s living expenses as opposed to this litigation¹.
20 (Biden Decl., at ¶ 8).

21
22 _____
23 ¹ Plaintiff acknowledges that he has other civil actions pending and is assessing each
24 one on a case-by-case basis to allocate his limited resources. (Biden Decl., at ¶ 7).
25 Plaintiff cannot describe the details of those analyses as it involves attorney-client
26 communications and the attorney work doctrine. (Biden Decl., at ¶ 7). For the case
27 at bar, despite Defendants’ public admissions that they “hacked” Plaintiff’s iCloud
28 and manipulated Plaintiff’s data, given the procedural posture, the limited extent of
discovery taken, and the need for expert testimony, Plaintiff has made the decision to
request that this case be voluntarily dismissed without prejudice and not expend
resources and time on this case. (Biden Decl., at ¶ 7).

1 Defendants will not suffer any legal prejudice by this voluntary dismissal
2 without prejudice because they will not lose any rights or defenses and already took
3 the opportunity to attack the pleadings on their motion to dismiss and anti-SLAPP
4 motion, but lost. Since then, very limited discovery has occurred. (Declaration of
5 Bryan M. Sullivan (“Sullivan Decl.”), ¶¶ 2-4). In fact, Defendant did not propound
6 any discovery until January 31, 2025 and it was not until February 11, 2025 that
7 Defendants first served a deposition notice on Plaintiff and requested acceptance of
8 service of a subpoena on Kevin Morris, Esq. (Sullivan Decl., ¶ 3). Indeed, Defendant
9 just recently brought in new counsel in this action on February 21, 2025—less than
10 two weeks ago. (Sullivan Decl., ¶ 4).

11 Accordingly, the Court should grant this Motion for Voluntary Dismissal
12 pursuant to Rule 41(a)(2).

13 **II. PROCEDURAL POSTURE OF THE CASE**

14 The Complaint in this action was filed on September 13, 2023 asserting causes
15 of action for (i) Violation Of The Computer Fraud And Abuse Act (18 U.S.C. § 1030),
16 (ii) Violation Of The California Computer Data Access And Fraud Act (Cal. Penal
17 Code § 502), and (iii) Bus. & Prof. Code Sections 17200 *Et Seq.* (Dkt #1). The crux
18 of this action is that, since approximately December 2020, Defendants and their
19 “team” of volunteers and independent contractors have spent countless hours
20 accessing, tampering with, manipulating, altering, copying and damaging computer
21 data that they do not own and that they claim to have obtained from hacking into
22 Plaintiff’s iPhone data and from scouring a copy of the hard drive of what they claim
23 to be Plaintiff’s “laptop” computer. (Dkt #1, ¶ 2). Further, Defendants admitted in
24 public statements in December 2022 in an interview with Roger Stone as follows:

25 And we actually got into his iPhone backup, we were the
26 first group to do it in June of 2022, we cracked the
27 encrypted code that was stored on his laptop. And more
28 drug deals were in there, which set our, set our release date

1 back.

2 Biden Decl., ¶ 2.

3 On December 21, 2023, Defendants filed a motion to dismiss challenging the
4 sufficiency of the Complaint’s allegations, jurisdiction over Defendants, and under
5 California’s Anti-SLAPP statute. (Dkt #23). During the pendency of their motion to
6 dismiss, on March 7, 2024, Defendants sought to recuse the assigned judge as being
7 biased because the presiding judge was appointed by Plaintiff’s father, President Joe
8 Biden. (Dkt #35). That motion was denied on April 26, 2024. (Dkt #46). On June 6,
9 2024, the Court denied Defendants’ motion to dismiss finding that Plaintiff properly
10 alleged the causes of action asserted and that those causes of action do not implicate
11 the First Amendment. (Dkt #50). On July 5, 2024, Plaintiff filed a motion for
12 attorney’s fees incurred in opposition to Defendants’ anti-SLAPP motion (Dkt #52),
13 which motion was granted on September 9, 2024 and attorney’s fees were awarded to
14 Plaintiff.

15 On November 12, 2024, the Court issued a minute order establishing all
16 material dates relating to this case with the non-expert discovery cut-off being April
17 1, 2025. (Dkt# 72). Plaintiff served discovery on November 6, 2024 and Defendants
18 responded on December 20, 2024, but Defendants’ responses were minimal and likely
19 will require motion practice as Plaintiff has been dealing with deficiencies with these
20 responses. (Sullivan Decl., ¶ 2). It was not until two and a half months later on
21 January 31, 2025 that Defendants propounded any written discovery and February 11,
22 2025 when they first requested Plaintiff’s deposition and sought to serve non-party
23 and Plaintiff’s legal counsel, Kevin Morris, Esq., with a subpoena for deposition.
24 (Sullivan Decl., ¶ 3). Additionally, for the first time, on February 21, 2025,
25 Defendants indicated their intent to file a summary judgment motion. (Sullivan Decl.,
26 ¶ 4). While the Parties were in the meet and confer process over the discovery issues
27 and Defendants’ intended summary judgment motion, including a meet and confer
28 discussion on February, 26, 2025, Plaintiff decided to seek to voluntarily dismiss this



1 action given all of the upcoming work and resulting fees to be incurred on this case.
2 (Biden Decl., ¶ 6; Sullivan Decl., ¶ 5). After making this decision, on March 3, 2025,
3 Plaintiff immediately informed Defendants of Plaintiff’s intent to dismiss this action
4 under Rule 41(a)(2). (Sullivan Decl., ¶ 6).

5 **III. EXIGENT CIRCUMSTANCES JUSTIFY *EX PARTE* RELIEF**

6 Exigent circumstances and good cause justify the *ex parte* relief sought herein
7 because the fact discovery cut-off is April 1, 2025 and the Parties have not taken any
8 depositions in this matter and if this relief were sought via a noticed motion on the
9 statutory notice timeline, it would be mid-April before a resolution is reached, which
10 would be after the non-expert discovery cut-off and the Parties would incur significant
11 fees dealing with discovery issues that may not be necessary if this Application is
12 granted on an *ex parte* basis.

13 **IV. ARGUMENT**

14 **A. THE COURT HAS THE AUTHORITY TO PERMIT DISMISSAL**
15 **OF THIS ACTION UNDER RULE 41(A)(2) WHERE PLAINTIFF**
16 **LACKS THE RESOURCES TO CONTINUE THE ACTION.**

17 “Generally, Rule 41(a)(2) grants a district court discretion to dismiss a case
18 with or without prejudice.” *Kamal v. Eden Creamery, LLC*, 88 F.4th 1268, 1279 (9th
19 Cir. 2023); *see also Hepp v. Conoco, Inc.*, 97 Fed.Appx. 124, 125 (9th Cir. 2004);
20 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). “[W]here the request is to
21 dismiss without prejudice, ‘[a] District Court should grant a motion for voluntary
22 dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some
23 plain legal prejudice as a result.’ ” *WPP Lux. Gamma Three Sarl v. Spot Runner, Inc.*,
24 655 F.3d 1039, 1058-59 n.6 (9th Cir. 2011) (quoting *Smith v. Lenches*, 263 F.3d 972,
25 975 (9th Cir. 2001)); *see also Stevedoring Servs. of Am. v. Armilla Intern. B. V.*, 889
26 F.2d 919, 921 (9th Cir. 1989) (“Rule 41(a)(2) permits a plaintiff, with the approval of
27 the court, to dismiss an action without prejudice at any time.”); *Hamilton v. Firestone*
28 *Tire & Rubber Co., Inc.*, 679 F.2d 143, 145 (9th Cir. 1982) (“courts generally allow



1 dismissal, even dismissal without prejudice, unless defendant will suffer “some plain
2 legal prejudice” as a result”); *Fisher v. Puerto Rico Marine Mgmt., Inc.*, 940 F.2d
3 1502, 1503 (11th Cir. 1991) (same); *Brown v. Baeke*, 413 F3d 1121, 1123 (10th Cir.
4 2005) (same). “The purpose of the rule is to permit a plaintiff to dismiss an action
5 without prejudice so long as the defendant will not be prejudiced or unfairly affected
6 by dismissal.” *Stevedoring Servs.*, 889 F.2d at 921 (internal cites omitted).

7 Several District Courts have previously held that an inability to continue
8 litigation due to financial constraints can be a legitimate consideration for dismissing
9 a case without prejudice. *See, e.g., Copeland v. Hiram Twp.*, 2019 WL 1980507, at
10 *2 (N.D. Ohio May 3, 2019) (finding as a “sufficient explanation for the necessity of
11 the dismissal based upon [the plaintiff’s] financial concerns and present inability to
12 pay to continue this case based upon increasing costs for upcoming costly discovery
13 disputes”); *Vector Env'tl. Grp., Inc. v. 3M Co.*, 2006 WL 8433616, at *3 (E.D. Mich.
14 Oct. 20, 2006) (finding that “the change in business climate” and the plaintiff’s
15 financial difficulties constituted “a sufficient explanation for [the plaintiff’s] pursuit
16 of a voluntary dismissal”); *Mallory v. Rush University Medical Center*, 2020 WL
17 6559155, *5 (N.D. Ill. Nov. 9, 2020) (“An inability to continue litigation due to
18 financial constraints can be a legitimate consideration for dismissing a case without
19 prejudice”).

20 By way of example, in *Vector Env'tl. Grp.*, 2006 WL 8433616, at *3, which
21 involved a theft of trade secrets relating to painting of Ford automobiles, the plaintiff
22 sought voluntary dismissal for the following reasons: (1) Ford purchases has
23 decreased substantially; (2) the threat from Defendant resulted in Plaintiff having to
24 undercutting its prices with Ford; (3) because of the business concerns, Plaintiff has
25 been unable to focus on this action; and (4) Vector may have to reveal additional trade
26 secrets. Defendant opposed dismissal on the ground that: (1) Defendant expended
27 substantial effort and expense in defending and should not be faced with a second
28 lawsuit; (2) Plaintiff violated a discovery order; (3) Plaintiff’s motion is only in

1 response to Defendant’s motion to dismiss for failing to respond to discovery
2 requests; and (4) Plaintiff has not offered a sufficient explanation for the dismissal
3 without prejudice, particularly because the case has been used to chill Defendant's
4 business relationship with Ford. The Court found that the change in business climate
5 and financial difficulties was a sufficient explanation for voluntary dismissal and
6 rejected all of Defendant’s arguments that it would suffer legal prejudice. The Court
7 reasoned that discovery was not extensive at the time of dismissal and that the
8 plaintiff’s failure to comply with discovery requests was their desire to terminate the
9 action. Finally, the Court stated that the fact that the defendant had not filed a motion
10 for summary judgment weighs in favor of dismissal without prejudice.

11 Here, Plaintiff is in a similar position as the plaintiff in *Vector Envtl. Grp.*, 2006
12 WL 8433616, at *3, in that Plaintiff has suffered significant financial setbacks in the
13 past year and cannot borrow any more money so he lacks the resources to continue
14 this litigation at this time. (Biden Decl., at ¶¶ 3-4). Furthermore, this lack of resources
15 has been exacerbated after the fires in the Pacific Palisades in early January upended
16 the life of Plaintiff and his family by rendering his rental house unlivable for an
17 extended period of time and, like many others in that situation, Plaintiff has had
18 difficulty in finding a new permanent place to live as well as finding it difficult to
19 earn a living. (Biden Decl., at ¶ 5). So, Plaintiff must focus his time and resources
20 dealing with his relocation, repairing the damage he has incurred due to the fires, and
21 paying for his family’s living expenses as opposed to this litigation, especially
22 considering that discovery disputes are arising and expert witness reports are due.
23 (Biden Decl., at ¶¶ 6 and 8). Such is a sufficient reason to grant a Rule 41(a)(2)
24 motion for voluntary dismissal. *See, e.g., Copeland*, 1980507, at *2; *Vector Envtl.*
25 *Grp.*, 2006 WL 8433616, at *3; *Mallory*, 2020 WL 6559155, *5. Additionally,
26 Plaintiff acted diligently immediately informing Defendant as soon as Plaintiff
27 decided to dismiss the case. (Biden Decl., ¶ 6; Sullivan Decl., ¶ 5-6).

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1 **B. DISMISSAL WILL NOT RESULT IN LEGAL PREJUDICE TO**
2 **DEFENDANTS.**

3 “Within the Ninth Circuit a district court should grant a motion for voluntary
4 dismissal unless a defendant can show that it will suffer some plain legal prejudice as
5 a result.” *Quismundo v. Trident Society, Inc.*, 2018 WL 1963782, *2 (S.D. Cal. Apr.
6 15, 2018) (citing *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001)); *Bennett v.*
7 *Dhaliwal*, 721 Fed. Appx. 577, 578 (9th Cir. 2017), *cert. denied sub nom.* 139 S.Ct.
8 269 (2018). Legal prejudice means “prejudice to some legal interest, some legal
9 claim, some legal argument.” *Zanowick v. Baxter Healthcare Corp.*, 850 F.3d 1090,
10 1093 (9th Cir. 2017); *Smith*, 263 F.3d at 976.

11 “Legal prejudice” under Rule 41(a)(2) “focuses on the rights and defenses
12 available to a defendant in future litigation” such as whether “dismissal without
13 prejudice would result in the loss of a federal forum, or the right to a jury trial, or a
14 statute-of-limitations defense” or when “dismissal of a party would have rendered the
15 remaining parties unable to conduct sufficient discovery to untangle complex fraud
16 claims and adequately defend themselves against charges of fraud.” *Westlands Water*
17 *Dist.*, 100 F.3d at 97 (citations omitted). The following arguments as claims of “legal
18 prejudice” in the Rule 41(a)(2) dismissal requests have been rejected: (i) “Uncertainty
19 because a dispute remains unresolved”; (ii) “the threat of future litigation...causes
20 uncertainty”; (iii) that “the defendant will be inconvenienced by having to defend in
21 another forum or where a plaintiff would gain a tactical advantage by that dismissal”;
22 and (iv) the “expense incurred in defending against a lawsuit....” *Westlands Water*
23 *Dist.*, 100 F.3d at 96–97; *Hamilton*, 679 F.2d at 145; *Zanowick*, 850 F.3d at 1093.

24 Here, Defendants will not lose any rights or defenses and already took the
25 opportunity to attack the pleadings on their motion to dismiss and anti-SLAPP motion,
26 but lost. Since then, very limited discovery has occurred. In fact, Defendants first
27 served discovery on January 31, 2025 and on February 11, 2025 when Defendants
28 served a deposition notice on Plaintiff and requested acceptance of service of a

1 subpoena on Kevin Morris, Esq. Indeed, Defendants brought in new counsel into this
2 action on February 21, 2025—less than two weeks ago. To date, no depositions have
3 occurred and no dispositive or discovery motions have been filed.² As such,
4 Defendants will not be suffer legal prejudice by the dismissal of Plaintiffs' claims.³

5 **C. DISMISSAL WITHOUT PREJUDICE SHOULD NOT BE BASED**
6 **ON ANY CONDITIONS**

7 Given the posture of the case that Defendants did not propound discovery until
8 January 31, 2025, no depositions have occurred, and no dispositive or discovery
9 motions have been filed, the Court should not set conditions for the granting of this
10 motion for voluntary dismissal. *Smith*, 263 F.3d at 976; *Burnette v. Godshall*, 828 F.
11 Supp. 1439, 1443 (N.D. Cal. 1993), *aff'd*, 72 F.3d 766 (9th Cir. 1995). The most
12 common condition is that the dismissal be with prejudice, however, “[a] dismissal
13 under Rule 41(a)(2) is normally without prejudice.” *Smith*, 263 F.3d at 976. “The
14 following factors are relevant in determining whether the dismissal should be with or
15 without prejudice: (1) the defendant's effort and expense involved in preparing for
16

17 ² While Defendants sent Plaintiff their portion of a summary judgment motion, they
18 did so at almost 11:00 pm PST on March 4, 2025 after they had had full notice of
19 Plaintiff’s intent to move to dismiss and bring this Application by March 6, 2025.
20 (Sullivan Decl., ¶ 9) This likely is an attempt to point to it as a reason to deny this
21 Application given the lack of progress on discovery. Moreover, even the filing of a
22 summary judgment motion is not sufficient to deny a request for dismissal. *See*
23 *Arteris S.A.S. v. Sonics, Inc.*, 2013 WL 3052903, at *4 (N.D. Cal. June 17, 2013)
24 (dismissal without prejudice appropriate even though defendants served and
25 responded to numerous discovery requests, retained experts, traveled to Europe to
26 depose witnesses, and spent hundreds of dollars preparing for trial); *Beckett v.*
27 *MACYSDSNB*, 2012 WL 479593, at *3 (N.D. Cal. Feb. 14, 2012) (granting voluntary
28 dismissal where discovery was closed and case was set to proceed to trial in a matter
of months).

³ In meet and confer correspondence Defendants’ only claim of prejudice was because
they incurred significant fees in this case. However, that is not “legal prejudice” for
denying dismissals under Rule 41(a)(2).

1 trial, (2) excessive delay and lack of diligence on the part of the plaintiff in prosecuting
2 the action, [and] (3) insufficient explanation of the need to take a dismissal.” *Williams*
3 *v. Peralta Cmty. College Dist.*, 227 F.R.D. 538, 540 (N.D. Cal. 2005) (quoting
4 *Burnette*, 828 F. Supp. at 1443-43).

5 By way of example, in *Corbett v. Pharmacare U.S., Inc.*, 2022 WL 2835847
6 (S.D. Cal. July 20, 2022), the court concluded that the dismissal should be without prejudice
7 because the defendant’s efforts in defending the case and preparing for trial had not
8 been substantial to date where discovery only recently began in January 2022. The
9 Court noted that “[w]hile months were spent challenging the pleadings, these efforts
10 do not concern Defendant's efforts and expense in preparing for trial. *See Arteris*
11 *S.A.S.*, 2013 WL 3052903, at *4 (holding dismissal without prejudice appropriate
12 even though defendants served and responded to numerous discovery requests,
13 retained experts, traveled to Europe to depose witnesses, and spent hundreds of dollars
14 preparing for trial, because there “ha[d] not been significant progress in the case”);
15 *Beckett*, 2012 WL 479593, at *3 (“True, discovery has closed; and, under the court's
16 scheduling order, this case is set to proceed to trial in a matter of months. But, the
17 record presented indicates that the timing of plaintiff's motion to dismiss, while not
18 ideal, is not due to any fault of Beckett or his current attorneys.”); *Burnette*, 828 F.
19 Supp. at 1444 (“[I]t weighs in Plaintiffs’ favor that the trial has not yet started and no
20 pretrial motions were pending at the time the dismissal motion was filed.”).
21 Defendants’ situation here is not even comparable to the foregoing examples where
22 the cases were voluntarily dismissed without prejudice.

23 Another condition that a defendant opposing a motion for voluntary dismissal
24 often requests is an award of costs and attorney’s fees. Notably, “no circuit court has
25 held that payment of the defendant's costs and attorney fees is a prerequisite to an
26 order granting voluntary dismissal.”⁴ *Stevedoring Servs.*, 889 F.2d at 921 (collecting

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28 ⁴ Even in the rare Rule 41(a)(2) dismissals where fees are awarded, only those fees

1 cases, and holding that the district court did not abuse its discretion by refusing to
2 require the plaintiff to pay the defendant's costs and attorney fees in case involving a
3 contract dispute). “In determining whether to award costs to a defendant after a
4 voluntary dismissal without prejudice, courts generally consider the following factors:
5 (1) any excessive and duplicative expense of a second litigation; (2) the effort and
6 expense incurred by a defendant in preparing for trial; (3) the extent to which the
7 litigation has progressed; and (4) the plaintiff's diligence in moving to dismiss.” *Santa*
8 *Rosa Memorial Hospital v. Kent*, 688 Fed. Appx. 492, 494 (9th Cir. 2017) (internal
9 quotes, ellipses, and brackets omitted). “The merits of the plaintiffs case are also
10 relevant.” *Id.* (District court did not abuse its discretion when it declined to award
11 costs and fees and dismissed without prejudice action by hospitals against Department
12 of Health Care Services pertaining to Medicaid reimbursement rates. Although
13 department incurred duplicative expenses and summary judgment motions were
14 before the court, the district court's decision was justified by its consideration of the
15 legitimate factor of the merit of the Plaintiffs' claims.); *see Quismundo*, 2018 WL
16 1963782 at *3 (declining to award fees and costs when dismissing without prejudice
17 of plaintiff s claims for violations of the California Labor Code and California
18 Business & Professions Code where dismissal did not expose defendants to excessive
19 of duplicative expenses because most of the work performed would remain useful in
20 the litigation in state court, and work that would not be of further use was of the
21 defendant's own making).

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24 that are useful in the continuing litigation between the parties are recoverable. *Koch*
25 *v. Hankins*, 8 F.3d 650, 652 (9th Cir. 1993) (finding “[t]he district court abused its
26 discretion in finding the amount of costs without differentiating between work
27 product which was rendered useless and that which might be of use in the [other]
28 litigation.”); *Smith*, 263 F.3d at 978 (“Only those costs incurred for the preparation of
work product rendered useless by the dismissal should be awarded as a condition of
voluntary dismissal”).

1 Here, the totality of the factors weigh against imposing any conditions,
2 including making the dismissal with prejudice or an award of costs and attorney’s fees
3 on Plaintiffs. Any additional litigation between the Parties will not result in excessive
4 or duplicative expenses, as the costs Defendants have incurred thus far for the
5 preparation of work product will not be rendered useless. The parties have yet to file
6 any summary judgment motions or discovery motions, *Daubert* motions, motions for
7 summary judgment, and pretrial motions. And Plaintiffs exercised diligence in
8 moving to dismiss this action after realizing Plaintiff’s financial situation was not able
9 to continue this litigation.⁵

10 **V. CONCLUSION**

11 For the foregoing reasons, Plaintiffs pray this Court grants their Motion for
12 Voluntary Dismissal pursuant to Rule 41(a)(2) without any conditions.

14 Dated: March 5, 2025

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26 _____
27 ⁵ In the event the Court is inclined to consider requiring conditions for the voluntary
28 dismissal requested in this Application, Plaintiff requests the opportunity to discuss
those conditions at a hearing on this application.

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CERTIFICATE OF SERVICE

I, April Wright, hereby certify that on this 5th day of March, 2025, a copy of the foregoing **PLAINTIFF ROBERT HUNTER BIDEN’S NOTICE OF EX PARTE APPLICATION FOR AN ORDER AND EX PARTE APPLICATION FOR AN ORDER MOTION AND MOTION TO VOLUNTARILY DISMISS ACTION PURSUANT TO FED. RULE CIV. PROC. 41(a)(2)** was served via email, on the following:

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