UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JAC'QUANN (ADMIRE) HARVARD, et al.,	)
Plaintiffs,	)
v.	) Case No.: 4:19-cv-00212-AW-MAF
RICKY DIXON, et al.,	)

5.2 million dollars purportedly claimed in attorney's fees. However, an award of such fees and costs is not justified in this civil rights case where Plaintiffs' claims and conduct have not been frivolous, vexatious, or without foundation. Indeed, the Court's numerous orders over the three-year course of this litigation demonstrate the reasonableness of Plaintiffs' pursuit of their claims, including, for example, the Court's denial of Defendants' motion to dismiss, and motion for summary judgment, and grant of multiple of Plaintiffs' motions to compel discovery. Defendants' demand of this exorbitant amount from incarcerated civil rights plaintiffs as a condition for dismissal in the absence of any improper or bad faith conduct is unsupported by existing law, gratuitously punitive, impermissibly chilling to civil rights litigants, and should be rejected.

Accordingly, the Court should grant Plaintiffs' motion for voluntary dismissal without prejudice and without conditioning dismissal on payment of Defendants' fees and costs.

II. PROCEDURAL HISTORY

Plaintiffs filed this case as a putative class action for systemic

a protective order requesting that the Court either 1) prohibit further inspections; or 2) limit Plaintiffs to four full inspections, three "tour-only" inspections, and no others unless necessary based on Defendants' response to Plaintiffs' class certification motion. ECF 312 at 3, 19. In response, Plaintiffs offered to reduce the number of additional and full inspections to seven. ECF 320 at 23. The Court denied Defendants' motion and ordered Defendants to conduct the seven additional and full inspections proposed by Plaintiffs. ECF 358 at 1, 6. Plaintiffs' experts relied on the information they obtained during the fifteen inspections to support their class certification and merits opinions. *See, e.g.*, ECF 430-1 at 5-

Throughout the discovery period, Defendants interfered with Plaintiffs' ability to prosecute their case through threats and retaliation against Named Plaintiffs and putative class member witnesses. In January 2020, the Court issued a protective order based on Plaintiff Johnny Hill's "serious allegations of retaliation" and Defendants' failure "to preserve the video that would either substantiate [his] claim or refute it." ECF 96 at 2-3. In February 2021, after a five-day evidentiary hearing, the Magistrate Judge found that FDC staff retaliated against and threatened putative class members. ECF 240 at 40-44. The Magistrate Judge further issued a protective order prohibiting future retaliation and setting forth specific security procedure guidelines for future inspections. *Id.* at 45-53. Defendants objected to the protective order, arguing, *inter alia*, that the guidelines violated the separation of powers doctrine and the Prison Litigation Reform Act. ECF 254 at 3. Based on their understanding that Defendants intended to appeal any order enumerating guidelines for prison inspections, and not wanting to delay future inspections and the prosecution of their case, Plaintiffs defended only the portion of the Order prohibiting retaliation. ECF 264 at 4-5. While crediting the Magistrate Judge's retaliation findings, the Court vacated the Magistrate Judge's order on April 7, 2021, determining that without the inspection guidelines, the order would simply amount to "a directive to obey the law." ECF 279 at 2-6. The Court suggested that Plaintiffs file a motion for sanctions if Defendants' retaliatory conduct continued. *Id.* at 8.

Defendants continued to retaliate against Named Plaintiffs and putative class witnesses

regulation," and they

438 at 4-5. Plaintiffs believed this raised a question of mootness for which they were obligated to notify the Court, and they did so promptly. ECF 432. During the case management conference on September 21, 2022, the Court indicated it did not necessarily believe there is a mootness issue that needs to be addressed at this stage in the proceedings for the five individuals who are no longer in solitary confinement.

After careful consideration of the Court's denial of class certification, which left individual Plaintiffs unable to achieve their goal of systemic, statewide injunctive relief, Plaintiffs Harvard, Burgess, Espinosa, Kenrick, Dean, Jeremiah Hill, and Johnny Hill move for voluntary dismissal under Rule 41(a)(2) with no conditioning of fees and costs.

III. ARGUMENT

A. Rule 41(a)(2) Standard

Rule 41(a)(2) permits a plaintiff, with the approval of the court, to dismiss an action "at any time." *McCants v. Ford Motor Co.*, 781 F.2d 855, 856 (11th Cir. 1986); Fed. R. Civ. P. 41(a)(2) ("[A]n action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."). The dismissal is without prejudice unless otherwise specified by the court. *Pontenberg v. Boston Scientific Corp.*, 252 F.3d 1253, 1255 (11th Cir. 2001).

"[I]n determining whether to allow a voluntary dismissal under Rule 41(a)(2)," the court considers the defendant's interests through a two-step analysis.

See Arias v. Cameron, 776 F.3d 1262, 1268-69 (11th Cir. 2015). The first question is whether "the defendant will suffer clear legal prejudice other than the mere prospect of a second lawsuit." *Id*. at 1268 (citing *Pontenburg*, 252 F. 3d at 1255). The second question is whether it is "appropriate" to impose "curative conditions"

the defendant's preferred forum (*Goodwin v. Reynolds*, 757 F.3d 1216, 1222 (11th Cir. 2014)); where there is a motion for summary judgment pending (*Pontenberg*, 252 F.3d at 1259); or even on the eve of trial (*Durham*, 385 F.2d at 368-69). Generally, the Eleventh Circuit has regularly found no legal prejudice and granted voluntary dismissal where the plaintiff has not exhibited bad faith. *See Durham*, 385 F.2d at 368-69; *Pontenberg*, 252 F.3d at 1259-60; *McCants*, 781 F.2d at 859; *Arias*, 776 F.3d at 1272-73; *Goodwin*, 757 F.3d at 1222; *U.S. v. $70,670.00 in U.S. Currency*, 929 F.3d 1293, 1299-1301 (11th Cir. 2019).

For the second question, to determine whether curative conditions are "appropriate," courts balance the "relevant equities" to ensure a just result between the parties. *McCants*, 781 F.2d at 857. At the court's discretion it may, but is not required, to condition the voluntary dismissal on the payment of costs, including

in civil rights actions should be "awarded attorney's fees in all but special circumstances," prevailing defendants

District courts in the Eleventh Circuit have applied the *Christiansburg* standard to determine whether plaintiffs should be required to pay defendants' fees and costs as a condition for voluntary dismissal without prejudice under Rule

Christiansburg standard here to grant Plaintiffs' motion for voluntary dismissal without conditioning such dismissal on payment of Defendants' fees and costs.

B. Dismissal Will Not Result in Legal Prejudice to Defendants.

Under the applicable Rule 41(a)(2) standard, none of the factors that courts consider to determine legal prejudice are present here. There are no dispositive motions pending, there is no trial date, and the parties have not begun pre-trial preparations. *See e.g., Pontenberg*, 252 F.3d at 1256 (no legal prejudice despite pending summary judgment motion); *Durham*, 385 F.2d at 368 (no legal prejudice despite three years of litigation and the failure by plaintiff's attorney "to appear for a pre-trial conference without good excuse"). Nor have Plaintiffs acted in bad faith. *See U.S.*, 929 F.3d at 1301 (affirming voluntary dismissal because "[t]he district court found that nothing in [the plaintiff's

without vexation, and in good faith. The Court's rejection of Defendants' motion to dismiss and motion for summary judgment reflect the non-frivolous nature of Plaintiffs' claims. In the absence of any frivolity or improper conduct, it would not only be unprecedented,[3] but also inequitable, unjust, and inappropriate to impose fees and costs against these incarcerated civil rights plaintiffs merely because they wish to dismiss their individual claims after denial of class certification.

The same policy considerations the Supreme Court relied on in *Christiansburg* for determining whether to award attorney's fees to prevailing parties are equally applicable in the te36Q0.0108(t)-uW* nr G[(t)e36Q0.0(e)1 1 14.04ET/9yy(a)(

Plaintiffs, who are "completely dependent on housing line staff for nearly every aspect of their lives," ECF 240 at 42, bravely came forward to redress constitutional and statutory violations against thousands of people in Defendants' custody. They persevered even when facing retaliation and threats of retaliation substantiated by this Court through a five-day evidentiary hearing. ECF 240 at 43-44 ("The [retaliatory] actions described, and feared, would reasonably deter most people; all but the toughest or most stubborn among us would refuse to be involved in an endeavor which is likely to cause greater harm than the potential good promised."). They demonstrated their claims were grounded in law and fact by surviving Defendants' motion to dismiss and motion for partial summary judgment, and by prevailing initially and/or ultimately in several discovery disputes. ECF 54 (denial of motion to dismiss); ECF 423 (denial of summary judgment); ECF 58, 98, 121, 158, 358, 395 (discovery disputes initially or finally decided in Plaintiffs' favor). When changes in factual circumstances and the denial of class certification eliminated the need to proceed with their Motion for Civil Contempt and Sanctions (ECF No. 319), Plaintiffs accordingly notified the Court to avoid further expenditure of judicial time and resources.

Now, upon the denial of class certification, and before the Court sets a trial date and the parties spend substantial time and resources preparing for trial, Plaintiffs move in good faith to voluntarily dismiss their claims. Given Congress's intent to

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Certificate of Local Rule 7.1(B) Conference

In accordance with N.D. Fla. Local Rule 7.1(B) and (C), the undersigned

Knapp, and Defendants' counsel,

ght in this motion.

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