

Andrew Ivchenko (#021145)
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Attorney for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Grant, et al.,

Plaintiffs

vs.

Ivchenko, et al.,

Defendants.

No. 21-CV-00108-JJT

**MOTION FOR JURISDICTIONAL
DISCOVERY**

(Assigned To Hon. John J Tuchi)

Defendants Andrew Ivchenko and Renee Ivchenko (“Defendants”) respectfully move this Court for an order permitting jurisdictional discovery relating to the claims of Plaintiffs that this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000 and the parties are citizens of different states. [Compl. ¶ 7]. To be clear about this request—Defendants only seek discovery relating to two facts: what were the amounts of the billings for legal fees incurred by Plaintiffs in two separate cases with an itemization for each case, and whether the Dickinson Wright law firm that represented Defendant Renee Ivchenko and 20 other plaintiffs in one of the two cases in dispute in this case paid Plaintiffs any of these legal fees by way of settlement. It is Defendants’ position that the amount in controversy cannot be anywhere near \$75,000 (even taking into account Plaintiffs’ spurious claims for punitive damages), and that this Court lacks subject matter jurisdiction.

1 This Motion is supported by the following Memorandum of Points and Authorities; the
 2 Complaint filed in this case; Declaration of Andrew Ivchenko, attached hereto as Exhibit 1;
 3 Defendants' Request for Judicial Notice, attached hereto as Exhibit 2; and Proposed Form of
 4 Order is attached hereto as Exhibit 3; all of which are incorporated herein.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 The underlying facts of this matter are discussed in other concurrently-filed pleadings,
 8 so they will not be repeated in full here. As noted in those other pleadings, Plaintiffs'
 9 Complaint asserts a veritable blizzard of confusing, illogical and overlapping claims against
 10 Defendants, including abuse of process and malicious prosecution claims. Plaintiffs'
 11 Complaint was filed just **three days** (emphasis added) after Defendant Andrew Ivchenko, a
 12 licensed Arizona attorney, served Plaintiffs in a State court action filed on behalf of a client
 13 who was a party in a previously dismissed case in this Court. [See Doc 1-4, Exhibit H].

14 It is Defendants' position that this Complaint is entirely groundless, and was filed by
 15 Plaintiffs and their attorney, David S. Gingras, in retaliation for Defendant Andrew Ivchenko
 16 continuing the litigation against them in State court. Having failed to maintain Federal court
 17 jurisdiction in **three** (emphasis added) removed State court cases during the past year [See
 18 e.g., Docs 1-3, Exhibit G; 1-4, Exhibit H], including one filed by Defendant Andrew
 19 Ivchenko and two more by two other law firms, Plaintiffs have now concocted yet another
 20 scheme to obtain Federal court jurisdiction though the back door by shoehorning a claim for
 21 declaratory relief, while seeking a "vexatious litigant designation" designed to torpedo
 22 pending State court litigation against Plaintiffs involving parties represented by Defendant
 23 Andrew Ivchenko.

24 Defendants' attorney, David S. Gingras, is known for filing frivolous lawsuits against
 25 attorneys and parties that have brought suit against his clients. See *Xcentric Ventures, LLC v.*
 26 *Borodkin*, 798 F.3d 1201 (9th Cir. 2015). Not having learned his lesson after wasting years of
 27

1 the Courts' time and resources in *Xcentric Ventures*, attorney Gingras is up to his old tricks
2 yet again, this time on behalf of Plaintiffs, notorious mugshot website owners who not only
3 victimize "tens of millions" of people (including Arizona residents), but who also are
4 operating in violation of Arizona law. [Compl. ¶ 14; Doc 1-5, Exhibit H, ¶¶ 60-87].

5 Generally, this litigation arises out of two state court actions litigated against Plaintiffs
6 from December 17, 2019 to November 13, 2021 in the Superior Court of Maricopa County.
7 [Docs 1-3, Exhibit G; 1-4, Exhibit H]. Both cases were subsequently removed to the Arizona
8 District Court and then voluntarily dismissed by the plaintiffs. The first case involved
9 Defendants, who were represented by the Dickinson Wright law firm. [Doc 1-3, Exhibit E].
10 Defendant Andrew Ivchenko was dropped from the case in an amended Complaint filed on
11 February 27, 2020, which also added 20 additional plaintiffs. [Doc 1-3, Exhibit G]. The
12 Plaintiffs herein removed that case on April 3, 2020 (Case 20-cv-00674-MTL).

13 What Plaintiffs fail to mention in the Complaint is that they received a substantial
14 payment from the Dickinson Wright law firm, who represented Defendant Renee Ivchenko
15 and 20 other anonymous plaintiffs in one of the two cases that are the subject of this dispute.
16 [See Exhibit 1]. It is Defendants' belief that the amount of this payment exceeded what
17 Plaintiffs requested in attorney's fees in that case. [See Exhibit 2]. If this is true, then it is
18 almost impossible that the amount in controversy in this case is anywhere near \$75,000,
19 which means this Court lacks subject matter jurisdiction under 28 U.S.C. § 1332(a)(1).

20 Although the procedural history of the two cases in question overlapped due to
21 Plaintiffs' constant attempts at removal, there was minimal activity and **no** (emphasis added)
22 substantive rulings. There was about four months of activity in the first case, and only **two**
23 **months** (emphasis added) of activity in the second case. No discovery had commenced.
24 Defendants need to evaluate Plaintiffs' legal services billings not only to see if jurisdiction is
25 proper in this Court, but also whether Defendant Renee Ivchenko should even be named as a
26 Defendant in this action, or if she should be severed from this case under Fed. R. Civ. P. 21.
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1 **II. LEGAL ARGUMENT**

2 “The jurisdiction of the federal courts is limited to ‘cases’ and ‘controversies.’”
3 *Oregon v. Legal Services Corp.*, 552 F.3d 965, 969 (9th Cir. 2009) (quoting U.S. Const., Art.
4 III, sec. 2). “Whenever it appears by suggestion of the parties or otherwise that the court lacks
5 jurisdiction of the subject matter, the court shall dismiss the action.” *Ibid.* (quoting Fed. R.
6 Civ. P. 12(h)(3)). “An objection that a federal court lacks subject matter jurisdiction may be
7 raised at any time, even after trial and the entry of judgment.” *Ibid.* (citation omitted). A
8 federal court has subject matter jurisdiction over an action that either arises under federal law,
9 or when there is complete diversity of citizenship between the parties and the amount in
10 controversy exceeds \$75,000.” *Tosco Corp. v. Communities for a Better Environment*, 236
11 F.3d 495, 499 (9th Cir. 2001) (citing 28 U.S.C. §§ 1331, 1332(a)).

12 Jurisdictional discovery may be necessary to help the court confirm that the
13 jurisdictional minimum exists in a diversity case. *Kovacs v. Chesley*, 406 F.3d 393, 395 (6th
14 Cir. 2005) (discussing the proper standard for evaluating whether the amount in controversy
15 has been satisfied after jurisdictional discovery and finding that “[i]t must appear to a legal
16 certainty that the claim is really for less than the jurisdictional amount to justify dismissal”).

17 The only jurisdictional basis alleged by Plaintiffs is diversity jurisdiction under 28
18 U.S.C. § 1332, which requires complete diversity among the parties and an amount in
19 controversy in excess of \$75,000. *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770,
20 774 (9th Cir. 2017); [Compl. ¶ 7]. As is true with other jurisdictional requirements, the
21 burden of demonstrating that the amount in controversy is above the jurisdictional threshold
22 rests on the party asserting federal jurisdiction. 15 *Moore’s Federal Practice* ¶ 102.107[1];
23 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (holding that a defendant
24 must carry its burden to establish by a preponderance of the evidence that the amount in
25 controversy exceeded \$75,000). If the complaint alleges damages in excess of the federal
26 amount-in-controversy requirement, then the amount-in-controversy requirement is
27 amount-in-controversy requirement, then the amount-in-controversy requirement is
28 amount-in-controversy requirement, then the amount-in-controversy requirement is

1 presumptively satisfied unless "it appears to a `legal certainty' that the claim is actually for
2 less than the jurisdictional minimum. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

3 The Seventh Circuit has summarized how this test works in practice:

4 [A] proponent of federal jurisdiction must, if material factual allegations are
5 contested, prove those jurisdictional facts by a preponderance of the evidence.
6 Once the facts have been established, uncertainty about whether the plaintiff can
7 prove its substantive claim, and whether damages (if the plaintiff prevails on the
8 merits) will exceed the threshold, does not justify dismissal. Only if it is "legally
9 certain" that the recovery (from plaintiff's perspective) or cost of complying with
the judgment (from defendant's) will be less than the jurisdictional floor may the
case be dismissed.

10 *Meridian Sec. Ins. Co. v. Sadowski*, 441 F.3d 536, 543 (7th Cir. 2006) (citations
11 omitted).

12 Here, the critical jurisdictional fact is simple—how much were the Plaintiffs billed in
13 legal fees by attorney David Gingras, and how much were they paid by the Dickinson Wright
14 law firm by way of settlement? In the first of the two cases involving Plaintiffs that was
15 subsequently dismissed (Case 20-cv-00674-MTL), Plaintiffs (Defendants in the case) sought
16 \$21,860 in attorney's fees, and provided detailed billing statements to support their claim.
17 This request was denied by the Court. [See Exhibit 2]. Substantially less legal work was done
18 on the second case (Case 20-cv-01142-SMB). There was about four months of activity in the
19 first case, and only two months of activity in the second case. No discovery had commenced.
20 After Defendant Andrew Ivchenko filed a Motion to Remand on July 9, 2020, there was no
21 further activity in this case for over four months, after which time the case was voluntarily
22 dismissed.
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24 Under these circumstances, there are serious questions whether the amount in
25 controversy exceeded \$75,000. The issue of subject matter jurisdiction takes on even greater
26 urgency due to Plaintiffs real reasons for filing this Complaint. Having failed to maintain
27 Federal court jurisdiction in three removed State court cases during the past year [See *e.g.*,
28 Docs 1-3, Exhibit G; 1-4, Exhibit H], including those filed by Defendant Andrew Ivchenko

1 and two other law firms, Plaintiffs have now concocted yet another scheme to obtain Federal
2 court jurisdiction though the back door by shoehorning a claim for declaratory relief
3 involving entirely unrelated matters, while seeking an unwarranted “vexatious litigant
4 designation” designed to torpedo pending State court litigation against Plaintiffs involving
5 parties represented by Defendant Andrew Ivchenko. [Compl. ¶¶ 256.]

6 **III. CONCLUSION**

7
8 For the foregoing reasons, Defendants respectfully request that the motion for
9 jurisdictional discovery be granted. Defendants respectfully request that the Court further
10 order that Plaintiffs provide: 1) detailed billing statements showing legal fees expended by
11 them in Case No. 20-cv-00674-MTL and Case No. 20-cv-01142-SMB; and 2) a sworn
12 affidavit from Plaintiffs stating the amount received from the Dickinson Wright law firm by
13 way of settlement or otherwise in connection with Case No. 20-cv-00674-MTL. For the
14 Court’s convenience, a Proposed Form of Order is attached hereto as Exhibit 3.

15 RESPECTFULLY SUBMITTED this 12th day of March, 2021.

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17 **ANDREW IVCHENKO PLLC**

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19 By: /s/ Andrew Ivchenko
20 Andrew Ivchenko, Esq.
21 ***Attorney for Defendants***
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Attorney for Plaintiffs

/s/ Andrew Ivchenko

EXHIBIT 1

Andrew Ivchenko (#021145)
ANDREW IVCHENKO, PLLC
4960 South Gilbert Road, #1-226
Chandler, AZ 85249
Phone: (480) 250-4514
Aivchenkopllc@gmail.com
Attorney for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Grant, et al.,

Plaintiffs

vs.

Ivchenko, et al.,

Defendants.

No. 21-CV-00108-JJT

**DECLARATION OF ANDREW
IVCHENKO IN SUPPORT OF
DEFENDANTS' MOTION FOR
JURISDICTIONAL DISCOVERY**

(Assigned To Hon. John J Tuchi)

DECLARATION OF ANDREW IVCHENKO

I, Andrew Ivchenko, hereby state and declare as follows:

1. My name is Andrew Ivchenko. I am a United States citizen, a resident of the State of Arizona, am over the age of 18 years, and if called to testify in court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge.

2. I am a lawyer based in Phoenix, Arizona. I have been admitted to practice law in the State of Arizona since 2002, and the State of Ohio since 1989.

3. This declaration is made in support of Defendants' Motion for Jurisdictional Discovery.

1 4. I am married to Renee Ivchenko, who was represented by the Dickinson
2 Wright law firm in Phoenix in connection with litigation in Maricopa County Superior
3 Court (Case No. CV2019-015355) against Travis Paul Grant, Kyle David Grant, and
4 Mariel Lizette Grant (“Defendants”). Defendants removed the case to the District of
5 Arizona on April 3, 2020 (Case No. 20-cv-00674-MTL).

6 5. Case No. 20-cv-00674-MTL was voluntarily dismissed by Renee Ivchenko
7 and 20 other plaintiffs through a motion to dismiss filed on May 19, 2020. Defendants
8 attempted to obtain attorney’s fees in the amount of \$21,860 from Renee Ivchenko only
9 (not from any of the other plaintiffs), but were unsuccessful. The case was dismissed
10 without prejudice on June 26, 2020, excepting Renee Ivchenko, as she had dismissed an
11 individual action against Defendants earlier in 2019 after they removed her arrest
12 information from their websites. Defendants did not object to having the identical claims
13 of the other 20 Plaintiffs dismissed without prejudice.

14 6. On or about February 24, 2021, I spoke with Michael S. Rubin, Esq., an
15 Assistant General Counsel for Dickinson Wright in Phoenix. I inquired about legal
16 threats being made by attorney David S. Gingras, in connection with the dismissal of
17 Case No. 20-cv-00674-MTL. Mr. Rubin informed me that Mr. Gingras had been
18 demanding money from the firm for some time, and that they decided to pay him a sum
19 certain in settlement so he would “just go away.”

20 7. Mr. Rubin made it clear to me that the firm did not believe there was any
21 factual or legal basis to Mr. Gingras’ claims against the firm in connection with the
22 representation in Case No. 20-cv-00674-MTL, and that all of the plaintiffs had valid
23 causes of action. Mr. Rubin emphasized that the settlement did not involve any
24 admission of liability, and that the plaintiffs in the case had probable cause to pursue
25 their claims. He stated that the settlement was a business decision on the firm’s part,
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1 weighing the costs, hassle and publicity of litigation over the matter. I inquired about the
2 amount of the settlement, but Mr. Rubin refused to disclose that information. However,
3 after an extensive conversation, I was left with the impression that the settlement amount
4 exceeded the \$21,860 Defendants claimed in their response to Plaintiffs' motion to
5 dismiss that they had expended on the case in legal fees.

6 8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the
7 laws of the United State of America that the foregoing is true and correct.
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9 **DATED** this 12th day of March, 2021.

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11 Respectfully submitted,

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13 By: /s/ Andrew Ivchenko
14 Andrew Ivchenko, Esq.
15 ***Attorney for Defendants***
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on March 12, 2021 via the Court's ECF system, thereby causing a true copy of said document to be served electronically upon each other party registered through ECF. In addition, copies of the foregoing were emailed to:

David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Attorney for Defendants

EXHIBIT 2

1 Andrew Ivchenko (#021145)
2 **ANDREW IVCHENKO, PLLC**
3 4960 South Gilbert Road, #1-226
4 Chandler, AZ 85249
5 Phone: (480) 250-4514
6 Aivchenkopllc@gmail.com
7 *Attorney for Defendants*

8
9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF ARIZONA**

11 Grant, et al.,

No. 21-CV-00108-JJT

12 Plaintiffs

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

13 vs.

(Assigned To Hon. John J Tuchi)

14 Ivchenko, et al.,

Defendants.

15 Pursuant to Fed. R. Evid. 201(c)(2), Defendants Andrew Ivchenko and Renee
16 Ivchenko respectfully request judicial notice be taken of the following records:

17 • Final Order in Case No. 2:20-cv-00674-MTL, Document 26, Filed 06/26/20,
18 attached hereto as Exhibit 2a.

19 Judicial notice of these documents is proper because “a court may properly take
20 judicial notice of its own records.” *State v. Rhome*, 235 Ariz. 459, 461, 333 P.3d 786, 788
21 (App. 2014); see also *Briggs v. Montgomery*, 2019 WL 2515950, *5 (D.Ariz. 2019) (“The
22 Court ‘may take judicial notice of court filings, as they are matters of public record, and ‘[i]t
23 is also well established that a federal district court can take judicial notice of its own
24 records.’”) (quoting *Baca ex rel. Nominal Defendant Insight Enterprises, Inc. v. Crown*, 2010
25 WL 2812712, *2 (D.Ariz. 2010)).

26 In addition, judicial notice of this record is necessary because Defendants have raised
27 serious questions as to whether this Court has original subject matter jurisdiction pursuant to
28

1 28 U.S.C. § 1332(a)(1). Jurisdictional discovery is necessary to help the court confirm that the
2 jurisdictional minimum exists in this case. *Kovacs v. Chesley*, 406 F.3d 393, 395 (6th Cir.
3 2005) (discussing the proper standard for evaluating whether the amount in controversy has
4 been satisfied after jurisdictional discovery and finding that "[i]t must appear to a legal
5 certainty that the claim is really for less than the jurisdictional amount to justify dismissal").

6 RESPECTFULLY SUBMITTED this 12th day of March, 2021.
7

8 **ANDREW IVCHENKO PLLC**
9

10 By: /s/ Andrew Ivchenko
11 Andrew Ivchenko, Esq.
12 ***Attorney for Defendants***
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Attorney for Plaintiffs

/s/ Andrew Ivchenko

EXHIBIT 2A

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Renee Ivchenko, et al.,

10 Plaintiffs,

11 v.

12 Kyle David Grant, et al.,

13 Defendants.
14

No. CV-20-00674-PHX-MTL

ORDER

15 Pending before the Court are Plaintiffs' Motion to Proceed Anonymously (Doc. 1-
16 1 at 133-145); Plaintiffs' Motion to Dismiss Without Prejudice and Stay Proceedings (Doc.
17 14); and Defendants' Motion to Consolidate Cases (Doc. 20). The motions are fully
18 briefed. (Doc. 1-1 at 133-145); (Doc. 1-1 at 165-182); (Doc. 7); (Doc. 14); (Doc. 15);
19 (Doc. 19); (Doc. 20); (Doc. 21); (Doc. 23). For reasons that follow Plaintiffs' Motion to
20 Dismiss is granted. Plaintiffs' Motion to Proceed Anonymously and Defendants' Motion
21 to Consolidate Cases are denied as moot.

22 **I. BACKGROUND**

23 This action arises out of Defendants' alleged publication of Plaintiffs' booking
24 photographs ("mugshots") online. The named Plaintiff, Renee Ivchenko, first sued
25 Defendants in a different case regarding the publication of her mugshot. (See Doc. 1-1 at
26 62.) That action, filed in Maricopa County Superior Court on May 9, 2019, alleged a
27 violation of the right of publicity, invasion of privacy, defamation, and intentional infliction
28 of emotional distress. (*Id.*) Defendants removed that case to the District Court on May 29,

1 2019, and Mrs. Ivchenko filed a notice of voluntary dismissal two days later. (*See* Doc. 1-
2 1 at 75, 82.)

3 On December 17, 2019, Mrs. Ivchenko initiated another lawsuit against Defendants
4 in Maricopa County Superior Court, raising identical claims. (Doc. 1-1 at 2-22.)
5 Defendants answered the complaint and thereafter moved for summary judgment. (Doc. 1-
6 1 at 30, 85.) On February 27, 2020, Mrs. Ivchenko filed an amended complaint, adding
7 twenty anonymous new plaintiffs (“Doe Plaintiffs”) and alleging violations of A.R.S. § 44-
8 7902 (the “Arizona Mugshot Act”). (Doc. 1-1 at 103-131.) Defendants filed an answer to
9 the amended complaint (Doc. 1-1 at 181) and removed the action to this Court on April 3,
10 2020. (Doc. 1.)

11 Meanwhile, in Maricopa County Superior Court, different plaintiffs sued
12 Defendants under the Arizona Mugshot Act, too. *See* Notice of Removal, *Doe I et al v.*
13 *Grant*, No. 2:20-cv-01142-SMB (D. Ariz. May 9, 2020), ECF No. 1. Defendants removed
14 that action to this Court on June 9, 2020, and it is proceeding before another Judge in this
15 District. *Id.*

16 On May 19, 2020, before Defendants removed the other action against them,
17 Plaintiffs moved to voluntarily dismiss this case without prejudice because many of the
18 Plaintiffs in this case were planning to join the other action. (Doc. 14 at 3.) Plaintiffs also
19 sought to stay this case, pending the Court’s decision on the Motion to Dismiss. (*Id.* at 1.)
20 Defendants do not object to dismissal without prejudice of the Doe Plaintiffs’ claims. They
21 argue, however, that the Court should dismiss Mrs. Ivchenko’s claims *with* prejudice and
22 order that she pay \$21,860 in attorney’s fees. (Doc. 15 at 1.) On June 10, 2020, Defendants
23 filed a Motion to Consolidate this case with *Doe I et al v. Grant*, No. 2:20-cv-01142-SMB.
24 (Doc. 20.)

25 The Court will grant Plaintiffs’ Motion to Dismiss, except that dismissal of Mrs.
26 Ivchenko’s claims shall be with prejudice. The Court declines to award attorney’s fees to
27 Defendants. The remaining motions are denied as moot.

II. LEGAL STANDARDS

Once the defendant files an answer or motion for summary judgment, the plaintiff may no longer voluntarily dismiss the case without a court order. Fed. R. Civ. P. 41(a)(1), (a)(2). Instead, the plaintiff must obtain court approval for the dismissal by filing a motion pursuant to Rule 41(a)(2), which provides that an action may be dismissed at the plaintiff's request "on terms that the court considers proper." In determining whether to allow dismissal under Rule 41(a)(2), the Court must consider whether doing so will unfairly affect the defendant. Generally, dismissal pursuant to Rule 41(a)(2) should be granted unless the defendant can show that it will suffer some clear legal prejudice as a result. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Legal prejudice means "prejudice to some legal interest, some legal claim, some legal argument." *Id.* (internal quotation marks omitted).

If the Court grants a plaintiff's motion to dismiss under Rule 41(a)(2), the Court must also determine whether dismissal should be with or without prejudice. Fed. R. Civ. P. 41(a)(2). Dismissal with prejudice may be appropriate where it would be inequitable or prejudicial to allow plaintiff to refile the action. *See Williams v. Peralta Cmty. Coll. Dist.*, 227 F.R.D. 538, 540 (N.D. Cal. 2005) (citations and quotations omitted). The Court may also consider the following factors when determining whether dismissal with prejudice is appropriate: (1) the defendants' effort and expense involved in preparing for trial, (2) excessive delay and lack of diligence on the part of plaintiff in prosecuting the action, and (3) insufficient explanation of the need to take dismissal. *Id.*

In determining whether to award costs after a voluntary dismissal, courts generally consider the duplicative expense of future litigation, the effort and expense incurred by a defendant in preparing for trial, the extent to which litigation has progressed, and the plaintiff's diligence in moving to dismiss. *See Santa Rosa Mem'l Hosp. v. Kent*, 688 F. App'x 492, 494 (9th Cir. 2017) (assessing costs after voluntary dismissal without prejudice).

III. ANALYSIS

Because Defendants do not object to the Doe Plaintiffs' motion for voluntary dismissal without prejudice, the Doe Plaintiffs' Motion to Dismiss without prejudice is granted. The Court agrees with Defendants, however, that dismissal of Mrs. Ivchenko's claims with prejudice is appropriate. Mrs. Ivchenko acknowledges that any subsequent attempt to refile her claims would be time barred. (Doc. 19 at 4.) Mrs. Ivchenko further states that she has no intent to participate in further litigation against Defendants. (*Id.* at 6.) The Court is also mindful that this is the second time Mrs. Ivchenko has moved to voluntarily dismiss her claims against Defendants and that the instant Motion was filed after the complaint had been substantially amended. Allowing Mrs. Ivchenko to refile her claims a third time, under these circumstances, would be inequitable to Defendants. Mrs. Ivchenko's claims against Defendants are therefore dismissed with prejudice.

Turning now to Defendant's request for attorney's fees, the Court finds that there are no exceptional circumstances to justify an award of costs and fees. There is no risk of future litigation because Mrs. Ivchenko's claims have been dismissed with prejudice and cannot be reasserted in another suit. Defendants' efforts in this case will be relevant and useful in the other pending action. And Plaintiffs moved to dismiss this action shortly after the related state court action was filed. Accordingly, Plaintiffs did not fail to exercise diligence in filing the Motion to Dismiss. It is therefore ordered denying Defendants' request for Mrs. Ivchenko to pay \$21,860 in attorney's fees.

IV. CONCLUSION

Accordingly,

IT IS ORDERED granting the Doe Plaintiffs' Motion to Dismiss without prejudice (part of Doc. 14).

IT IS FURTHER ORDERED granting Plaintiff Ivchenko's Motion to Dismiss (part of Doc 14) with prejudice.

IT IS FURTHER ORDERED denying Plaintiffs' Motion to Stay Proceedings (part of Doc. 14) as moot.

IT IS FURTHER ORDERED denying Defendants' request for attorney's fees (part of Doc. 15).

IT IS FURTHER ORDERED **denying** Plaintiffs' Motion to Proceed Anonymously (Doc. 1-1 at 133-145) as moot.

IT IS FURTHER ORDERED denying Defendants' Motion to Consolidate Cases (Doc. 20) as moot.

IT IS FINALLY ORDERED directing the Clerk of the Court to terminate this case.

Dated this 26th day of June, 2020.

Michael T. Liburdi

Michael T. Liburdi
United States District Judge

EXHIBIT 3

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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF ARIZONA**
7

8 Grant, et al.,

9 Plaintiffs

10 vs.

11 Ivchenko, et al.,

12 Defendants.
13

No. 21-CV-00108-JJT

**[PROPOSED] ORDER RE
JURISDICTIONAL DISCOVERY**

14
15 The Court having reviewed the Motion for Jurisdictional Discovery filed by
16 Defendants Ivchenko, et al., and any response/reply thereto, it is hereby ordered as follows:

17 The motion is GRANTED. Defendants are hereby allowed to take discovery, subject to
18 the Federal Rules of Civil Procedure, to acquire: 1) detailed billing statements showing legal
19 fees expended by Plaintiffs in Case No. 20-cv-00674-MTL and Case No. 20-cv-01142-SMB;
20 and 2) a sworn affidavit from Plaintiffs stating the amount received by them from the
21 Dickinson Wright PLLC law firm by way of settlement or otherwise in connection with Case
22 No. 20-cv-00674-MTL.

23 SO ORDERED.

24 DONE IN OPEN COURT THIS DATE: _____
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27 _____
28 Honorable John J. Tuchi
District Judge