UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEN GAMBOA, *et al.*,

Plaintiffs,
v.

CASE NO. 18-10106
HONORABLE DENISE PAGE HOOD

FORD MOTOR COMPANY,
ROBERT BOSCH GMBH,
ROBERT BOSCH LLC,

Defendants.
______________________________________/

ORDER GRANTING PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE [#167]

I. INTRODUCTION

The matter before the Court concerns a Motion for Voluntary Dismissal Without Prejudice. Plaintiffs Glenn Goodroad, Kohen Marzolf, and Victor Sparano (collectively "Plaintiffs") filed their Motion to Dismiss their claims without prejudice on March 30, 2020. [ECF No. 167] Defendants Ford Motor Co., Bosch LLC, and Bosch GmbH (collectively "Defendants") filed their opposition to Plaintiffs' Motion on May 13, 2020. [ECF No. 179] Defendants filed a Motion for Leave to File a Corrected Brief in Opposition to Plaintiffs' Motion for Voluntary Dismissal on May 14, 2020. [ECF No. 180] Plaintiffs filed their Reply on May 20, 2020. [ECF No. 182]

II. LEGAL ANALYSIS

Federal Rule of Civil Procedure 41(a)(2) allows for a court-ordered voluntary dismissal of an action[1] at a plaintiff's request and "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). The rule also states that "[u]nless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." *Id.*

Courts allowing voluntary dismissals without prejudice have the discretion to impose conditions. *Duffy v. Ford Motor Co.*, 218 F.3d 623, 629 (6th Cir. 2000). If the Court does impose conditions on the dismissal, it must provide notice to the moving party. Plaintiffs who move for dismissal without prejudice under Rule 41(a)(2) "'must be given a reasonable opportunity to withdraw [their] motion in the event the district court grants the motion' but with additional terms." *August Storck KG v. Nabisco, Inc.*, No. 95 C 1446, 1996 WL 634116, at *5 (N.D. Ill. Oct. 30, 1996) (quoting *Marlow v. Winston & Strawn*, 19 F.3d 300, 305 (7th Cir. 1994)); *see also Duffy*, 218 F.3d at 634 (holding that the district court abused its discretion by not giving plaintiffs notice and opportunity to withdraw motion before imposing conditions on dismissal).

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[1] Defendants note that the Sixth Circuit has "suggested that dismissal of individual parties rather than an entire action should be accomplished through Rule 21, not Rule 41." [ECF No. 180-2, Pg.ID 10801 n. 26] As Defendants indicate, both rules use the same standard. *See Letherer v. Alger Grp.*, LLC, 328 F.3d 262, 265–66 (6th Cir. 2003).

On deciding this issue, the Court must ask whether any such "without prejudice" dismissal would cause Defendants to suffer plain legal prejudice. *Perkins v. MBNA Am.*, 43 F. App'x 901, 902 (6th Cir. 2002). To determine whether Defendants will be prejudiced, the Court should consider four factors: (1) Defendants' effort and expense of preparation of trial; (2) excessive delay and lack of diligence on the part of the moving Plaintiffs in pursuing their claims; (3) the sufficiency of explanations offered by the moving Plaintiffs; and (4) whether Defendants have filed motions for summary judgment. *Maldonado v. Thomas M. Cooley Law Sch.*, 65 F. App'x 955, 956 (6th Cir. 2003) (internal citations omitted). The Court need not resolve all the factors in the movants' favor to determine that dismissal without prejudice is warranted. *Tyco Labs., Inc. v. Koppers Co.*, 627 F.2d 54, 56 (7th Cir. 1980). The ultimate discretion rests with the Court, and the factors serve as a guide. *Id.* For the reasons stated below, the Court finds that the factors weigh in favor of the moving Plaintiffs.

Defendants argue that requiring the moving Plaintiffs to participate in discovery is (1) necessary to avoid legal prejudice; and (2) reasonable and consistent with discovery permitted against third parties. *Bridgeport Music, Inc. v. Universal Music–MCA Music Publ'g, Inc.*, 481 F.3d 926, 931 (6th Cir. 2007); *see also Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994) (opining that the "primary purpose of [Rule 41(a)(2)] in interposing the

requirement of court approval is to protect the nonmovant from unfair treatment."); *see also Cty. of Santa Fe v. Pub. Serv. Co. of N.M.*, 311 F.3d 1031, 1047 (10th Cir. 2002).

Defendants request that if the movants' motion is granted that the movants still be required to "(1) provid[e] complete responses to outstanding discovery requests, including by producing responsive documents and communications; (2) respond[] to interrogatory requests; (3) appear[] for . . . deposition[s]; and (4) preserv[e] or produc[e] any and all class vehicle(s) for inspection, to be scheduled within 90 days of an order denying their Motion (unless applicable state or other executive orders prohibit such activity." [ECF No. 180-2, Pg.ID 10794] Defendants claim that such a request is not unduly burdensome. *See, e.g.*, *Fraley v. Facebook Inc.*, No. 11-1726 LHK (PSG), 2012 WL 555071, at *2-3 (N.D. Cal. Feb. 21, 2012).

Since this case involves a class action, Defendants claim that the moving Plaintiffs' participation is needed to differentiate individual issues from class issues. *See Wal–Mart v. Dukes*, 564 U.S. 338, 350 (2011). Defendants argue that requiring the moving Plaintiffs to participate in discovery will mitigate the "risk that Plaintiffs [will] create an 'atypical sampling of the putative class [by dismissing Moving Plaintiffs' claims], thereby making it more difficult [for Defendants] to show individual issues predominate over common ones.'" *See*

Counts v. General Motors LLC, Case No. 1:16-cv-12541-TLL-PTM (E.D. Mich. Mar. 12, 2019), ECF No. 151 at 3 (quoting *In re Dig. Music Antitrust Litig.*, No. 06 md 1780 (LAP), 2015 WL 13678846, at *4-5 (S.D.N.Y. Mar. 2, 2015)); *see also Sherman v. Yahoo! Inc.*, No. 13CV0041– GPC–WVG, 2015 WL 473270, at *7 (S.D. Cal. Feb. 5, 2015) (approving voluntary dismissal with the requested conditions because "[Plaintiff's] experience with Yahoo [was] likely to be relevant to class certification issues, even if he no longer wishes to be burdened with this litigation"); *All. for Glob. Justice v. Dist. of Columbia*, Civ. No. CV.A.01-0811 PLF/JMF, 2005 WL 469593, at *3-4 (D.D.C. Feb. 7, 2005).

Defendants indicate that in January 2020, they requested information about "Plaintiffs' purchase decisions, relied-upon advertising, purchase price, financing, offers to sell their class vehicle(s), maintenance history, modifications to their class vehicle(s) including the use of after-market tuners, and communications concerning Ford or Bosch LLC." [ECF No. 180-2, Pg.ID 10799] (footnote omitted). Defendants assert that they have received none of this information. Defendants assert that unconditionally granting the movants' request would allow Plaintiffs to "cherry-pick their Proposed Class Representatives after examining what discovery would reveal in order to create a more uniform class." *See In re Dig. Music*, 2015 WL 13678846, at *4.

Plaintiffs further explain that they should not be compelled to litigate if they do not wish to. *See Org. of Minority Vendors, Inc. v. Illinois Cent.-Gulf R.R.*, 1987 WL 8997, at *1 (N.D. Ill. Apr. 2, 1987). Plaintiffs argue that Defendants cited cases are inapplicable because this case has not progressed as far as the *Counts* or *Duramax* cases. Plaintiffs indicate that in *Duramax*, discovery requests had been pending for more than one year and depositions had already been scheduled. *In re Duramax Diesel Litig.*, No. 1:17-cv-11661-TLL-PTM, 2020 WL 1685462 (E.D. Mich. Apr. 7, 2020) ECF No. 179 at 15–21.

Guided by the *Maldonado* factors, the Court finds that legal prejudice would not result from granting Plaintiffs' Motion. The Court is also persuaded by the fact that Plaintiff Goodroad first indicated his intentions to withdraw last November. [ECF No. 179-2] Here, the case is in initial pleading stages and little to no preparations have begun to prepare for trial. No depositions have been scheduled and discovery is in its initial stages. *See Fraley*, 2012 WL 555071 (requiring the moving plaintiff to participate in a previously scheduled deposition before granting the voluntary dismissal); *Sherman*, 2015 WL 473270, at *7 (finding that the plaintiff must continue to participate in discovery because he was the "*sole*" named plaintiff for more than a year) (emphasis added). The Court notes that discovery has also been hindered by COVID-19, which has inevitably caused delays. The parties stipulated to these delays.

The instant matter differs from *Counts* because, in *Counts*, "at least half of the proffered class representatives" sought withdrawal. Here, 24 class representatives would remain. *See Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996) ("In [the Ninth] circuit, we have stated that a district court properly identified legal prejudice when the dismissal of a party would have rendered the remaining parties unable to conduct sufficient discovery to untangle complex fraud claims and adequately defend themselves against charges of fraud.").

III. CONCLUSION

IT IS ORDERED that Plaintiffs' Motion for Voluntary Dismissal Without Prejudice [ECF No. 167] is **GRANTED.**

s/Denise Page Hood
United States District Judge

DATED: December 2, 2020