

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

STATE OF ARKANSAS et al.; )

Defendants. )

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CIVIL ACTION NO:  
4:09-CV-00033-JLH

**MOTION TO VOLUNTARILY DISMISS COUNT II OF COMPLAINT  
WITHOUT PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), the United States respectfully requests that this Court issue an order dismissing, without prejudice, Count II of the complaint filed on January 16, 2009, (“CHDC Complaint”).

As more fully set forth in the attached Memorandum of Points and Authorities, Count II alleges a Civil Rights of Institutionalized Persons Act, (“CRIPA”), 42 U.S.C. § 1997, claim focusing on the rights of Conway Human Development Center (“CHDC”) residents under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213. The United States seeks dismissal without prejudice of Count II because the United States will imminently file, in the United States District Court for the Eastern District of Arkansas, a comprehensive Statewide ADA Complaint challenging the State’s entire system for serving its

residents with developmental disabilities in the most integrated setting appropriate to their needs. The United States will continue to pursue the remaining CRIPA claims in this action according to the schedule laid out in the Court's Amended Final Scheduling Order [Dkt. 25].

Because the Statewide ADA Complaint subsumes the limited ADA issues in the CRIPA-based CHDC Complaint, the most efficient course for the Court and the parties would be to dismiss the limited ADA issues from this CRIPA action, without prejudice, and allow the parties to litigate any ADA issues related to CHDC in their more natural place, the statewide ADA action. Defendants will not suffer any prejudice from the dismissal of Count II, and judicial economy will be served by allowing all the United States' ADA claims to proceed in a single, statewide ADA action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 5, 2010, I served a true and correct copy of the Motion to Voluntarily Dismiss Count II of Complaint Without Prejudice with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

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