IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LANCE ALYAS, et al., Plaintiff, vs. ANNE E. LOPEZ, et al. Defendants.	CIVIL NO. 25-00358 JAO-WRP ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS ACTION WITHOUT PREJUDICE (ECF NO. 105)

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In this case, Plaintiffs[1]—who own and operate businesses that sell hemp products—sued state officials to enjoin amendments to state hemp regulations that were set to go into effect on January 1, 2026. They now move to voluntarily dismiss their case without prejudice pursuant to Federal Rule of Civil Procedure ("Rule") 41(a)(2). *See* ECF No. 105. Defendants oppose and ask the Court to either dismiss the case with prejudice or deny the motion, but also seek attorneys'

[1] The current plaintiffs are Lance Alyas, who sues individually and as the business Oahu Dispensary and Provisions LLC; and Kyler Falces, who sues individually and as the business Elevated Enterprises LLC. ECF No. 99. The current defendants are Anne E. Lopez in her official capacity as Attorney General for Hawai'i and Kenneth S. Fink, M.D., in his official capacity as Director of the Hawai'i Department of Health. ECF No. 99.

fees and costs in the event the Court dismisses the case without prejudice. *See* ECF No. 107.

For the following reasons, the Court GRANTS the motion to dismiss without prejudice and declines to impose attorneys' fees and costs. However, in light of Plaintiffs' counsel's dilatory and confusing handling of this case, should Plaintiffs refile this action in some form in this District, the Court DIRECTS Defendants to file a Notice of Related Case at that time.

I. BACKGROUND

A. Procedural History

On July 2, 2025, the Hawai‘i legislature passed House Bill 1482, also known as Act 269. *See* 2025 Hawaii Laws Act 269 (H.B. 1482). On August 21, 2025, Plaintiffs, along with several others, filed the original complaint and an Emergency Motion for Temporary Restraining Order ("TRO") pro se. ECF No. 1, 3. After that group of plaintiffs struggled to find their footing procedurally, *see* ECF Nos. 12, 28, 49, 51, the Court denied their original motion for a TRO without prejudice on September 22, 2025, *see* ECF No. 57.

Counsel Robert J. Christensen entered a Notice of Appearance thereafter, and the Court held a hearing on September 25, 2025 that was initially intended to address the plaintiffs' failure to prosecute, *see* ECF No. 51, but evolved into a status conference. *See* ECF No. 63. During that status conference, plaintiffs'

counsel represented that he anticipated filing an amended complaint, while defense counsel reported her plans to file a motion for judgment on the pleadings in two weeks.

On November 4, 2025, the defendants moved to dismiss the original complaint as no amended complaint had been filed, *see* ECF No. 93, and the Court set an opposition deadline of November 26. On Friday, November 21, plaintiffs' counsel asked for an emergency status conference to clarify some matters, *see* ECF No. 96. At that status conference, which was held on the following Monday (and two days before the opposition to the pending motion to dismiss was due) the Court inquired about the outstanding amended complaint. *See* ECF No. 96. Plaintiffs' counsel orally asked for leave to file a First Amended Complaint, which he said would be filed by December 12, 2025, followed by a new Motion for Temporary Restraining Order on December 15, 2025. *See* ECF No. 96. Based on this, the Court granted the leave sought and the Court struck the pending motion to dismiss without objection. *See id*.

Plaintiffs' counsel then asked for an extension of time to file the new pleading and the new TRO motion, ECF No. 97, which the Court granted in part for good reasons. *See* ECF No. 98. He then filed a First Amended Complaint ("FAC") and second motion for a TRO ("Second TRO Motion") on December 19, 2025—more than five months after the passage of Act 269, and about three months

after the Court had denied the initial TRO Motion. *See* ECF Nos. 99, 100. The Court held a status conference on December 22, 2025 which was the first business day after the FAC and Second TRO Motion were filed. *See* ECF No. 101.

The FAC—which significantly amended the named parties[2]—focused heavily on amendments outlined in Act 269 that allegedly redefined the term "hemp." *See, e.g.*, ECF No. 99 ¶ 4 ("The new law further narrows the definition of legal hemp[.]"; *id.* ¶ 48 (referring to "[t]he revised definition of 'hemp'"). The problem with the FAC, however, is that it offered no citations for the amendments, and the Court couldn't find any in Act 269.

At the December 22 status conference, the Court asked Plaintiffs' counsel to explain where and how the state legislature amended the definition of "hemp" in Act 269. Plaintiffs' counsel then pointed to Act *263*, which did not redefine "hemp," and then to an *already existing* Hawaii Administrative Rule that also didn't define "hemp" the way the FAC said it had been redefined. *Compare* ECF No. 99 ¶ 4 ("The new law further narrows the definition of legal hemp and imposes strict total THC content limits (encompassing all isomers, not just **delta-9** THC)[.]")), *with* Act 263 (defining "hemp" as any part of the Cannabis sativa L.

[2] Specifically, the FAC reduced the number of plaintiffs from a dozen to two, and the named defendants from five to two. *Compare* ECF No. 1, *with* ECF No. 99.

plant "with a **delta-9**-tetraydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis"), and Act H.A.R. 11-37-2 (same).

Baffled by the fact that Plaintiffs' counsel couldn't point the Court to the centerpiece of his client's FAC, the Court asked Plaintiff's counsel what he wanted to do. At that point, Plaintiffs sought leave to file a Second Amended Complaint ("SAC"), which the Court assumed would cite the relevant soon-to-be-implemented statute or regulation that allegedly amends the definition of "hemp" in a way that affected Plaintiffs' businesses. Defendants objected.

Given the liberal standards for granting leave to amend a complaint, the Court granted Plaintiffs such leave and, without their objection, denied the Second TRO Motion. *See* ECF No. 103. The Court directed Plaintiffs to file an SAC and a new TRO Motion that same day by 5:00 p.m., and ordered Defendants to respond by noon the following day. *See* ECF No. 103. Part of the reason why the Court set a quick deadline for the defendants' response is that defense counsel had represented that her opposition to the Second TRO Motion was nearly complete.

To the Court's surprise, rather than file an SAC and a new TRO Motion, Plaintiffs' counsel instead filed the instant Motion to Dismiss Action without Prejudice ("Motion"), apparently without providing any advance notice to defense counsel, *see* ECF No. 105 at 4 ("the timing of this filing did not permit a meaningful pre-filing conference before the applicable deadline"), whom the Court

assumes had been revising an opposition to the anticipated new TRO Motion. Indeed, the Court itself had started drafting the introduction and procedural history sections of its anticipated ruling on the TRO to ensure a quick turnaround.

The Court thereafter entered an order directing Defendants to file a response no later than 10:00 a.m. the following day, December 23, 2025. ECF No. 106. Defendants did so. ECF No. 107.

II. LEGAL STANDARDS

Rule 41(a) addresses voluntary dismissals of lawsuits. Subsection (a)(1)(A) states that dismissals can be accomplished without a court order when sought by plaintiffs "before the opposing party serves either an answer or a motion for summary judgment" or where the parties enter a stipulation to dismissal. Fed. R. Civ. P. 41(a)(1)(A). But where, as here, an answer to the original complaint was filed, *see* ECF No. 34,[3] and the parties have not stipulated to dismiss, dismissal is

[3] Plaintiffs incorrectly state that an action may only be dismissed by court order "[a]fter an opposing party has appeared" and thus have moved to voluntarily dismiss under Rule 41(a)(2). *See* ECF No. 105 at 2. But Plaintiffs "may dismiss an action without a court order by filing: (i) a notice of dismissal *before the opposing party serves either an answer or a motion for summary judgment*; or (ii) a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A) (emphasis added). Whether Plaintiffs can still voluntarily dismiss as of right under Rule 41(a)(1)(A)(i) when Defendants filed an answer to Plaintiffs' *original* complaint, but not the operative FAC, appears to be an open question in this Circuit. *See Aana v. Pioneer Hi-Bred Int'l, Inc.*, 2014 WL 819158, at *2–4 (D. Haw. Feb. 28, 2014); *see also Quick v. EMCO Enters., Inc.*, 251 F.R.D. 371, 373–74 (S.D. Iowa 2008). But in any event, Plaintiffs seek voluntary dismissal by court order, so the Court will look at Plaintiffs' request under Rule 41(a)(2).

permitted only by court order "on terms that the court considers proper" pursuant to Rule 41(a)(2). The rule further directs, "[u]nless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." Fed. R. Civ. P. 41(a)(2).

"A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the district court's sound discretion[.]" *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996) (internal quotation marks and citation omitted). Most relevant to the decision whether to grant a plaintiff's dismissal with or without prejudice is the question of "whether the defendant will suffer some plain legal prejudice as a result of the dismissal." *Id*.

The Ninth Circuit has explained that "legal prejudice" means "prejudice to some legal interest, some legal claim, some legal argument." *Westlands Water Dist.*, 100 F.3d at 97. "But uncertainty because a dispute remains unresolved is not legal prejudice and the threat of future litigation which causes uncertainty is insufficient to establish plain legal prejudice." *Kamal v. Eden Creamery, LLC*, 88 F.4th 1268, 1280 (9th Cir. 2023) (internal quotation marks, brackets, and citations omitted). Moreover, "the mere inconvenience of defending another lawsuit does not constitute plain legal prejudice and plain legal prejudice does not result merely because the defendant will be inconvenienced by having to defend in another forum or where a plaintiff would gain a tactical advantage by that dismissal." *Id*. (internal quotation marks, citations omitted).

III. DISCUSSION

Defendants here argue that dismissal should be with prejudice because "Plaintiffs have had nearly three months to amend the complaint as necessary, and to date, have still not stated a cognizable claim." ECF No. 107 at 3. They also complain that Plaintiffs' last-minute decision to seek dismissal of the case "left Defendants with two business hours to respond" based on the Court-imposed deadline. *Id*. at 5. Defendants contend that Plaintiffs have "pulled the rug out from under" them more than once here, including when Plaintiffs didn't file their FAC as quickly as Defendants expected, and then again, on December 22, 2025, when Plaintiffs sought leave to file an SAC. *Id*.

None of the whiplash that Plaintiffs have caused rises to the level of legal prejudice. Although Plaintiffs' and their counsel's handling of this case has been frustrating, the high standard for granting a dismissal with prejudice isn't met here because the result of a dismissal without prejudice is uncertainty and wasted time, which do not amount to legal prejudice. *See Kamal*, 88 F4th at 1280. Nor is the inconvenience that defense counsel has endured and could endure when handling a possible future version of this case enough to grant dismissal with prejudice. *See id*.

Instances where district courts have granted dismissal with prejudice suggest that the stage of the proceedings also matters in the with-or-without-prejudice

calculus. Such dismissals have occurred at more advanced stages of the proceedings, such as after adverse rulings on critical motions or extensive discovery. *See, e.g.*, *Zen-Noh Hay, Inc. v. Knight AG Sourcing*, LLC, 2021 WL 2895502, at *1 (D. Ariz. July 9, 2021); *Telegram Messenger Inc. v. Lantah*, LLC, 2020 WL 5074399, at *3 (N.D. Cal. Aug. 24, 2020). Although this case has had a lot of litigation to date, none of the substantive questions have been resolved, which weighs in further favor of dismissal without prejudice.

In a similar vein, the Court declines Defendants' request for attorneys' fees and costs. In *Westlands Water District*, the Ninth Circuit explained that "[i]mposition of costs and fees as a condition for dismissing without prejudice is not mandatory" and cautioned the district court there on remand that, "if the district court decides it should condition dismissal on the payment of costs and attorney fees, the defendants should only be awarded attorney fees for work which cannot be used in any future litigation of these claims." 100 F.3d at 97. It may be that the work defense counsel performed to date in this matter will be of use later.

This is all to say that the Court GRANTS the Motion in full. However, the Court further DIRECTS Defendants to file a Notice of Related Case pursuant to LR40.2 in the event this litigation rears its head in some future, similar form.[4] The

[4] The decision regarding whether to reassign the case will of course be left to the Chief Judge.

purpose of such direction is two-fold: one, because the Court expects it would result in judicial economy if a new and similar case is handled by the undersigned, and two, the Court takes this opportunity to caution Plaintiffs' counsel that any future mishaps will be met with possible sanctions. *See* LR16.1.

The most bizarre and concerning part of this case is that the FAC repeatedly stated that the new amendments to Hawaii's hemp laws redefined "hemp," but Plaintiffs never cited anything that reflects the sort of definitional sea change central to the FAC. The fact that Plaintiffs' counsel showed up at the December 22 hearing with a chart of the relevant amendments and none of them mentioned such definitional change only furthers the Court's confusion as to how Plaintiffs' counsel couldn't have noticed this issue. And he similarly could not tell the Court where the alleged problematic amendment could be found—even after a more-than-ten-minute recess. All of this, of course, resulted in a waste of defense counsel's and her supervisor's and staff's time, and the Court's and its staff's time.

If Plaintiffs wish to revive their case in the future, the undersigned will be aware that Plaintiffs have already taken numerous bites at this apple.

IV. CONCLUSION

For the foregoing reasons, the Motion to Dismiss is GRANTED WITHOUT PREJUDICE. The Clerk of Court is directed to close the case file and terminate the case.

IT IS SO ORDERED.

DATED: Honolulu, Hawai‘i, December 29, 2025.

Jill A. Otake
United States District Judge

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