

1  
2  
3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN JOSE DIVISION**

6  
7 ALEXANDER HUYNH, et al.,

8 Plaintiffs,

9 v.

10 QUORA, INC.,

11 Defendant.

Case No. 18-cv-07597-BLF

**ORDER GRANTING PLAINTIFF  
ERICA COOPER'S MOTION TO  
DISMISS VOLUNTARILY WITHOUT  
PREJUDICE**

[Re: ECF 120]

12  
13 Plaintiff Erica Cooper ("Cooper") moves to voluntarily dismiss herself from this action  
14 without prejudice and without costs to any party pursuant to Federal Rule of Civil Procedure  
15 41(a)(2). See Mot., ECF 120. Defendant Quora, Inc. ("Defendant") opposes this motion and  
16 requests the Court either dismiss Cooper with prejudice or dismiss her without prejudice and order  
17 her to pay costs and fees specific to her to Defendant. See Opp'n, ECF 136. Further, Defendant  
18 wants any dismissal conditioned on Cooper sitting for a deposition previously ordered by  
19 Magistrate Judge Cousins. See Id.; Order, ECF 119. Pursuant to Civil Local Rule 7-1(b), the Court  
20 has determined that this matter is suitable for determination without oral argument. For the reasons  
21 below, the Court GRANTS Cooper's Motion to Dismiss Voluntarily Without Prejudice and  
22 declines to impose costs or conditions.

23 **I. BACKGROUND**

24 Cooper originally filed suit against Defendant on December 21, 2018. Compl., Cooper et  
25 al. v. Quora, Inc., No. 5:18-cv-07680 (N.D. Cal Dec. 21, 2018), ECF 1. Her case was consolidated  
26 with the present action on February 1, 2019. Order, Cooper et al. v. Quora, Inc., No. 5:18-cv-  
27 07680 (N.D. Cal Feb. 1, 2019), ECF 14. The putative class action alleges Defendant failed to  
28 safeguard Plaintiffs' personal identifying information in a third-party attack on Defendant's

1 systems. Consol. Third Am. Class Action Compl., ECF 85. After the Court granted in part and  
2 denied in part Defendant’s motion to dismiss, Plaintiffs’ remaining claims are for misrepresentation  
3 under California’s Unfair Competition Law and negligence. Order, ECF 116.

4 Starting on January 24, 2020, Defendant began trying to take the declaration of Cooper and  
5 other named Plaintiffs. Mot. 1; Opp’n 2. After scheduling difficulties in February, Cooper had  
6 agreed by March 5 to a March 29th deposition date. Opp’n 2; Decl. of Rebekah S. Guyon ¶ 3.  
7 Cooper, a registered nursing assistant, was personally and professionally impacted by the COVID-  
8 19 pandemic. See Mot.; Decl. of Erica Cooper (“Cooper Decl.”) ¶¶ 2; 4-6. As a result of the  
9 pandemic, Plaintiffs’ counsel cancelled all depositions scheduled for the end of March, including  
10 Cooper’s. Decl. of Ivy T. Ngo (“Ngo Decl.”) ¶ 8. After more scheduling difficulties and the deaths  
11 of Plaintiff’s mother-in-law and grandmother from COVID-19 related causes, Defendants moved  
12 to compel Cooper’s deposition on April 24 and June 23, 2020. Cooper Decl. ¶ 6; Ngo Decl. ¶¶ 10;  
13 20. On June 25, 2020, Magistrate Judge Cousins granted Defendant’s motion to compel and  
14 ordered Cooper to appear for a deposition by July 17, 2020. Order, ECF 119; Ngo Decl. ¶ 21.  
15 Judge Cousins stated, “[i]f Cooper and her counsel do not comply, the Court will consider  
16 sanctions and an award of fees under FRCP 37.” Order, ECF 119.

17 On June 29, 2020, Cooper’s counsel circulated a joint stipulation to Defendant’s counsel  
18 proposing the voluntary dismissal of Cooper from the action. Ngo Decl. ¶ 22. The parties were  
19 unable to come to an agreement on the stipulation. Id. Plaintiff filed this motion on July 1, 2020.  
20 See Mot. Cooper states that between working full time in the emergency room of Hackensack  
21 Meridian Health JFK University Medical Center in New Jersey and completing a course for her  
22 master’s degree in theology, she does not have time to sit for a full-day deposition. Cooper Decl.  
23 ¶¶ 2; 7. It does not appear that she met Judge Cousins’s July 17 deadline. The parties agree that  
24 Plaintiffs’ Motion for Class Certification is due October 13, 2020. Mot. 6; Opp’n 8. The last day to  
25 hear dispositive motions in the case is June 17, 2021. Order, ECF 48.

## 26 II. LEGAL STANDARD

27 “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request  
28 only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). In this

1 Circuit, the decision to grant a voluntary dismissal under Rule 41(a)(2) “is addressed to the sound  
2 discretion of the District Court.” *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th  
3 Cir. 1982). “The purpose of the rule is to permit a plaintiff to dismiss an action without prejudice  
4 so long as the defendant will not be prejudiced or unfairly affected by dismissal.” *Stevedoring*  
5 *Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 921 (9th Cir. 1989) (citations omitted). When  
6 evaluating a motion for voluntary dismissal pursuant to Rule 41(a)(2), the Court must determine:  
7 (1) whether to allow dismissal; (2) whether the dismissal should be with or without prejudice; and  
8 (3) what terms and conditions, if any, should be imposed. *Williams v. Peralta Cmty. Coll. Dist.*,  
9 227 F.R.D. 538, 539 (N.D. Cal. 2005).

#### 10 **A. Whether to Allow Dismissal**

11 The Ninth Circuit has held that a Rule 41(a)(2) motion for voluntary dismissal should be  
12 granted “unless a defendant can show that it will suffer some plain legal prejudice as a result.”  
13 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). “[P]lain legal prejudice does not result  
14 merely because the defendant will be inconvenienced by having to defend in another forum or  
15 where a plaintiff would gain a tactical advantage by that dismissal.” *Id.* at 976 (internal quotation  
16 marks omitted). Mere threat of future litigation, without more, does not constitute legal prejudice.  
17 See *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). Furthermore, “the  
18 expense incurred in defending against a lawsuit does not amount to legal prejudice.” *Id.*

19 When assessing whether to allow dismissal, the Court must consider the effect of the  
20 dismissal on other parties to the litigation since this requested dismissal would not dispose of the  
21 entire case. *Fraley v. Facebook, Inc.*, No. 11-CV-01726-LHK, 2012 WL 893152, at \*2 (N.D. Cal.  
22 Mar. 13, 2012); *Columbia Cas. Co. v. Gordon Trucking, Inc.*, No. 09-cv-05441-LHK, 2010 WL  
23 4591977, at \*3 (N.D. Cal. Nov. 4, 2010).

#### 24 **B. Whether the Dismissal Should be With or Without Prejudice**

25 In determining whether dismissal should be with or without prejudice, courts typically  
26 consider: (1) the defendant’s effort and expense involved in preparing for trial; (2) excessive delay  
27 and lack of diligence on the part of the plaintiff in prosecuting the action; and (3) insufficient  
28 explanation of the need to dismiss. *Fraley*, 2012 WL 893152, at \*3 (citing *Burnette v. Godshall*,

1 828 F. Supp. 1439, 1443–44 (N.D. Cal. 1993)). Dismissal with prejudice may be appropriate  
 2 where “it would be inequitable or prejudicial to defendant to allow plaintiff to refile the action.”  
 3 Burnett, 828 F.Supp. at 1443.

#### 4 **C. Terms and Conditions of Dismissal**

5 “In determining whether to award costs to a defendant after a voluntary dismissal without  
 6 prejudice, courts generally consider the following factors: (1) any excessive and duplicative  
 7 expense of a second litigation; (2) the effort and expense incurred by a defendant in preparing for  
 8 trial; (3) the extent to which the litigation has progressed; and (4) the plaintiff’s diligence in  
 9 moving to dismiss.” Williams, 227 F.R.D. at 540.

### 10 **III. DISCUSSION**

11 As both parties acknowledge, ruling on a Rule 41(a)(2) motion is “addressed to the sound  
 12 discretion of the District Court.” Westlands Water Dist., 100 F.3d at 97 (quoting Stevedoring  
 13 Servs., 889 F.2d at 921). Here, Defendant doesn’t allege legal prejudice if Cooper is dismissed.  
 14 Defendant alleges it has devoted significant time and monetary resources toward this case, see  
 15 Opp’n 5-6, but those facts do not amount to legal prejudice. As to the effect of Cooper’s dismissal  
 16 on other class members, Cooper correctly points out that there is another named plaintiff  
 17 remaining in the litigation who has already been deposed. Mot. 3; Ngo Decl. ¶ 16. This named  
 18 plaintiff can “prosecute the action vigorously on behalf of the class,” which is something Cooper  
 19 is not in position to do. In re Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 566 (9th Cir. 2019).

20 The considerations to weigh when deciding whether to dismiss with or without prejudice  
 21 similarly favor Cooper and her request for dismissal without prejudice. This case, with its  
 22 remaining named plaintiff, will continue to move forward as planned with or without Cooper’s  
 23 participation as a named or absent class member. Defendant’s investment of resources in this  
 24 litigation this far—2,160 hours of attorney time as of July 1, Opp’n 6—will not go to waste, as  
 25 that preparation will undoubtedly prove useful in opposing the upcoming Motion for Class  
 26 Certification and any additional motion practice. Further, Cooper has been quite clear in  
 27 explaining her need to dismiss. As a front-line healthcare worker who has also personally lost  
 28 loved ones in the COVID-19 pandemic, Cooper has been particularly affected by our devastating

1 new reality. The Court does not find it would be inequitable or prejudicial to Defendant to allow  
2 Cooper to become an absent class member should the putative class be certified.

3 Finally, the Court is not inclined to condition Cooper's dismissal without prejudice in any  
4 way or award costs to the Defendant. The cases cited by Defendant to support the position that  
5 Cooper's dismissal should be conditioned on her sitting for a deposition are factually different  
6 than this present case or support a dismissal without conditions. See Fraley, 2012 WL 893152, at  
7 \*4 (declining to impose a condition to sit for a deposition on Plaintiff's dismissal because Plaintiff  
8 has an independent duty to comply with deposition order from Magistrate); Opperman v. Path,  
9 Inc., No. 13-CV-00453-JST, 2015 WL 9311888, at \*5 (N.D. Cal. Dec. 22, 2015) (declining to  
10 impose a condition to sit for a deposition absent legal prejudice); Sherman v. Yahoo! Inc., No.  
11 13CV0041-GPC-WVG, 2015 WL 473270, at \*7 (S.D. Cal. Feb. 5, 2015) (sole named plaintiff for  
12 two years required to sit for deposition to avoid legal prejudice to Defendant); Dysthe v. Basic  
13 Research, LLC, 273 F.R.D. 625, 629-30 (C.D. Cal. 2011) (ruling on a discovery dispute after class  
14 certification motion involving Plaintiff who had not yet been dismissed). Additionally, none of the  
15 plaintiffs in those cases presented the same hardship facts as Cooper, whose circumstances are  
16 more factually similar to Roberts v. Electrolux Home Prod., Inc., No. 12-1644 CAS, 2013 WL  
17 4239050, at \*2 (C.D. Cal. Aug. 14, 2013) ("The health and family concerns outlined in the  
18 declarations show that Horton and Roberts' continued participation in this case as named plaintiffs  
19 would...be inappropriately burdensome on Horton and Roberts"). To be clear, this Court is not  
20 relieving Cooper of her obligations under Judge Cousins's order. That is a matter to be addressed  
21 to Judge Cousins.

22 As for imposing costs, the Court reiterates that the efforts and costs Defendant has  
23 expended on the case thus far will be beneficial to the future litigation of this case, as the case is  
24 still in the early, pre-Motion for Class Certification phase. The Court is exercising its discretion  
25 to dismiss Cooper's claims without prejudice, and without assessment of costs, fees or conditions.

#### 26 **IV. ORDER**

27 For the foregoing reasons, the Court GRANTS Cooper's Motion for Voluntary Dismissal  
28 Without Prejudice.

1 Dated: August 10, 2020



---

BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28