

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MARY GOLD CABALUNA, T.T.,)	CV 15-00112 LEK-RLP
)	
Plaintiffs,)	
)	
vs.)	
)	
SECRETARY OF HUMAN HEALTH)	
SERVICE, ET AL.,)	
)	
Defendants.)	
)	

ORDER DISMISSING CASE WITH PREJUDICE

On April 2, 2015, pro se Plaintiff Mary Gold Cabaluna ("Cabaluna") filed a "Letter of Complaint" ("Complaint") on behalf of her minor daughter, T.T. On April 30, 2015, this Court issued its Order Dismissing Complaint and Denying Application to Proceed in District Court Without Prepaying Fees or Costs ("4/30/15 Order"). [Dkt. no. 5.] In the 4/30/15 Order, this Court concluded that, because there is no indication that Cabaluna is an attorney licensed to practice in this district, she cannot bring claims pro se on behalf of T.T. This Court therefore dismissed the Complaint, but gave T.T. leave to file an amended complaint through a licensed attorney. [*Id.* at 6-7.]

On May 11, 2015, Cabaluna filed a document titled "Amended Complaint," [dkt. no. 13,] which this Court construed as her "Proposed Complaint," on behalf of herself and T.T. (collectively "Plaintiffs"). [Order Striking Proposed Complaint

Filed on May 11, 2015, filed 5/26/15 (dkt. no. 18) ("5/26/15 Order"), at 1.] This Court struck the Proposed Complaint because: 1) its claims on behalf of Cabaluna did not state a claim upon which relief can be granted; and 2) Cabaluna continued to attempt to bring claims on behalf of T.T.

The 5/26/15 Order directed Plaintiffs to file any amended complaint by June 26, 2015. This Court cautioned Plaintiffs that, if they failed to file their amended complaint by June 26, 2015 or if they filed an amended complaint which did not address the issues identified in the 5/26/15 Order, this Court would dismiss the case with prejudice and direct the Clerk's Office to close the case. [Id. at 6-7.] This Court subsequently extended the deadline to July 27, 2015. [Order Granting in Part and Denying in Part Motion Filed on June 19, 2015, filed 6/25/15 (dkt. no. 25), at 1.]

Since Plaintiffs have not filed an amended complaint to correct the deficiencies in the Complaint by the deadline, this Court has the discretion to dismiss the Complaint with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under

Fed. R. Civ. P. 41(b)).¹ After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),² this Court finds that the public interest in the expeditious resolution of this litigation and this Court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, the defendants will not be prejudiced by dismissal because Plaintiffs did not serve the Complaint, and there are no less drastic alternatives available at this time.

Plaintiffs' Complaint, which this Court previously dismissed without prejudice, is HEREBY DISMISSED WITH PREJUDICE. This Court DIRECTS the Clerk's Office to close the case on **September 2, 2015**, unless Plaintiffs file a motion for reconsideration of this Order by **August 26, 2015**.

IT IS SO ORDERED.

¹ Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

² The Ninth Circuit has

identified five factors that a district court must consider before dismissing a case . . . : (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

DATED AT HONOLULU, HAWAII, August 5, 2015.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

MARY GOLD CABALUNA VS. SECRETARY OF HUMAN HEALTH SERVICES, ET AL;
CIVIL 15-00112 LEK-RLP; ORDER DISMISSING CASE WITH PREJUDICE