

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

"ROCKY" ROQUE DE LA FUENTE,) CIVIL 16-00398 LEK-KJM
)
 Plaintiff,)
)
 vs.)
)
 SCOTT T. NAGO, in his)
 official capacity as Chief)
 Election Officer, State of)
 Hawaii,)
)
 Defendant.)
)

ORDER DISMISSING CASE WITH PREJUDICE

On July 19, 2016, pro se Plaintiff Roque De La Fuente filed his Complaint for: 1) Violation of the Due Process Clause - 42 U.S.C. § 1983 - Undue Burden 2) Violation of the Equal Protection Clause ("Complaint") against Defendants Scott T. Nago, in his official capacity as Chief Election Officer ("Nago"), and the State of Hawai`i ("the State" and collectively "Defendants").

[Dkt. no. 1.] On March 28, 2017, this Court issued its Order Granting in Part and Denying in Part Defendants' Motion to Dismiss ("3/28/17 Order"). [Dkt. no. 25.¹] The 3/28/17 Order dismissed all claims against the State with prejudice, and also dismissed all claims insofar as they sought injunctive relief related to the 2016 presidential election. [3/28/17 Order at 17-18.] This Court dismissed the remainder of Plaintiffs' claims

¹ The 3/28/17 Order is also available at 2017 WL 1159094.

for violations of the First and Fourteenth Amendments to the United States Constitution without prejudice. [Id.] Because it was possible that Plaintiff's claims could be cured by amendment, this Court gave Plaintiff until May 9, 2017 to file a motion for leave to file an amended complaint. [Id. at 18.]

On May 9, 2017, Plaintiff filed a Motion for Leave to Amend Original Complaint ("Motion for Leave"). [Dkt. no. 28.] On June 7, 2017, Plaintiff filed a Motion to Withdraw Motion for Leave to File Amended Complaint ("Motion to Withdraw"). [Dkt. no. 31.] The Motion to Withdraw noted that "Plaintiff understands that withdraw[al] of his pending motion for leave to file an amended complaint terminates any further litigation of this action in this Court." [Motion to Withdraw at 1.] In an Entering Order filed on June 9, 2017, the magistrate judge granted the Motion to Withdraw and deemed the Motion for Leave withdrawn. [Dkt. no. 32.]

There is no complaint pending in this case, Plaintiff has not cured the defects that the Court identified in the 3/28/17 Order, and the Court therefore has the discretion to dismiss this case 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 a deadline to file the amended complaint gave the district court the discretion to

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

The claims in Plaintiff's Complaint that the Court previously dismissed without prejudice are HEREBY DISMISSED WITH PREJUDICE. There being no remaining claims in this case, the Court DIRECTS the Clerk's Office to enter final judgment and close this case on **July 28, 2017**, unless Plaintiff files a motion

² Rule 41(b) states, in relevant part, that "[i]f 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."

³ 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 (citation and internal quotation marks omitted).

for reconsideration of this Order by **July 24, 2017**. The final judgment shall be in favor of Defendants pursuant to the 3/28/17 Order and ths instant Order.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, July 7, 2017.



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

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