

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MEMPHIS A. PHILLIP RANDOLPH
INSTITUTE, *et al.*,

Plaintiffs,

v.

TRE HARGETT, *et al.*,

Defendants.

Civil No. 3:20-cv-0374
JUDGE RICHARDSON
MAGISTRATE JUDGE FRENSELY

**PLAINTIFFS' NOTICE TO THE COURT AND
MOTION FOR VOLUNTARY DISMISSAL**

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and in response to the Court's order directing the parties to submit a statement on the impact of the recent Sixth Circuit opinion on the disposition of this case, *see* ECF 147, Plaintiffs Memphis A. Phillip Randolph Institute, *et al.*, hereby move to voluntarily dismiss this action. Plaintiffs have reached out to the Defendants in good faith regarding the potential for a stipulated dismissal, but were not able to reach a resolution prior to the deadline set by this Court. If a stipulation is reached, Plaintiffs will withdraw this motion.

LEGAL STANDARD

"Whether voluntary dismissal should be granted under Rule 41(a)(2) is within the sound discretion of the district court." *Walther v. Florida Tile, Inc.*, 776 F. Appx. 310, 315 (6th Cir. 2019) (citing *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994)). "The primary purpose of Rule 41(a)(2)'s requirement of a court order is to protect the nonmovant from unfair treatment." *Id.* Dismissal without prejudice is proper unless "the defendant would suffer plain legal prejudice" as a result. *Id.*

ARGUMENT

Plaintiffs have determined, in light of the rulings of the Sixth Circuit and this Court, *see* ECF 146; ECF 115; EFC 66, that their claims no longer warrant litigation at this time. As such, Plaintiffs hereby move to voluntarily dismiss this action without prejudice.

Defendants will not suffer any legal prejudice if this case is dismissed without prejudice. First, Defendants contend that the case is due to be dismissed for lack of jurisdiction. *See* ECF 150 at 2. Assuming Defendants are correct, dismissal of this action would “not operate[] as an adjudication upon the merits,” and thus would be without prejudice regardless. *InteraCorp v. Henderson*, 428 F.3d 605, 620–21 (6th Cir. 2005) (finding clear error when a court dismissed an action with prejudice based on lack of jurisdiction); *Holloway v. Brush*, 220 F.3d 767, 778 (6th Cir. 2000) (“A ‘dismissal for lack of jurisdiction’ does not ‘operate[] as an adjudication on the merits’ for preclusive purposes.” (quoting Fed. R. Civ. P. 41(b)) (alterations in original)).

Indeed, none of the factors that courts consider in weighing legal prejudice to Defendants supports such a finding here. Plaintiffs have not excessively delayed in seeking voluntary dismissal, and they have been diligent in prosecuting this case. *See Florida Tile*, 776 F. Appx. at 315. Further, although the parties have engaged in preliminary proceedings, the case is not so far advanced that dismissal would prejudice Defendants. *See id.* (finding dismissal without prejudice proper notwithstanding that the parties had already engaged in preliminary litigation on the merits of the case). Defendants have neither answered nor filed a motion for summary judgment on Plaintiffs’ amended complaint; discovery is not complete, and indeed was stayed for much of the pendency of the case; trial is still months away; and Defendants will not lose any legal defense as a result of dismissal without prejudice. *See id.* As such, Defendants will not face any legal prejudice should the Court grant Plaintiffs’ motion.

For these reasons, Plaintiffs respectfully request that the Court dismiss this case without prejudice, each party to bear its own costs and fees.

Dated: June 30, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to Local Rule 5.01, that on this 30th day of June, 2021, the foregoing Notice and Motion was served via the Court's CM/ECF filing system on the following:

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