

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AMANDA JONES,  
Plaintiff,  
v.  
DAN KLEINMAN.  
Defendant.

Civil Action No. 2:24-CV-10750-BRM-JSA

**MOTION DATE: May 5, 2025**

**ORAL ARGUMENT REQUESTED**

**DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2)**

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Defendant Dan Kleinman opposes Plaintiff Amanda Jones’s motion for voluntary dismissal under Fed. R. Civ. P. 41(A)(2).

## **1.0 INTRODUCTION AND BACKGROUND**

The procedural history of this case is the only factual background relevant to Plaintiff’s motion for voluntary dismissal.<sup>1</sup> In short, Plaintiff filed the exact same lawsuit in two different courts. She filed her lawsuit in this Court first, and then in Louisiana. She claims to have filed suit here as a “protective measure” in the event Kleinman challenged personal jurisdiction in Louisiana, as though that justifies duplicative litigation. This explanation seems...odd.

On January 21, 2025, Kleinman filed a motion to dismiss or transfer venue in the duplicative Louisiana lawsuit (ECF No. 11-2). As Plaintiff pointed out shortly thereafter, he had thereby waived his ability to challenge personal jurisdiction in a Rule 12(b) motion (ECF No. 11-1). If Plaintiff’s position is credited, that should have been the end of this action; the anticipated jurisdictional challenge never materialized, and thus she could seek to voluntarily dismiss the New Jersey case. Yet she did not dismiss this case. Rather, she moved to stay it on January 23 because she wanted to see how Kleinman’s motion to dismiss in Louisiana would shake out (ECF No. 11-1 at 6). The following day, Kleinman provided notice that he intended to file a motion for judgment on the pleadings under New Jersey’s Anti-SLAPP law which, if granted, would result in an award of attorneys’ fees (ECF No. 13).

Over two months later, while the parties here litigated matters related to the Anti-SLAPP motion and an injunction under the first-filed rule that would stop any further action in the Louisiana case while this case was pending, the Court denied Plaintiff’s motion to stay (ECF No.

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<sup>1</sup> Kleinman vehemently denies there is anything false, defamatory, or otherwise actionable about his statements at issue. He will address those in more detail in his forthcoming Anti-SLAPP motion if the Court permits him to file one.

33). During the hearing on that motion, the Court made it very clear that Plaintiff's method of duplicative litigation was neither normal nor permissible (ECF No. 35-2 at 19:10-21). It was only at this point, once Plaintiff learned that this Court would not approve of her litigation strategy, that she moved to dismiss. If she had actually filed this suit as a "protective measure" (whatever that means), she would have sought voluntary dismissal on January 21, when she realized personal jurisdiction was not contested in Louisiana. But instead, she allowed litigation costs here to mount for two months and only sought dismissal after receiving an adverse ruling from this Court. The forum shopping trip seems quite clear.

The Court is now tasked with how to resolve a mess Plaintiff made. Kleinman renewed his request to file an Anti-SLAPP motion before Plaintiff filed her motion for voluntary dismissal (ECF No. 35), and on April 1, the Court set it for an April 17 pre-motion conference. The Anti-SLAPP statute provides that if a plaintiff tries to voluntarily dismiss their suit without prejudice after an Anti-SLAPP motion has been filed, the defendant is still entitled to a ruling on the Anti-SLAPP motion. NJ Rev Stat § 2A:53A-55(b). If not for the Court's pre-motion conference procedures, Defendant would have filed an Anti-SLAPP motion back in January. The Court should thus stay Plaintiff's motion for voluntary dismissal until after all proceedings related to the Anti-SLAPP motion are concluded. In the alternative, the Court should permit dismissal, but only with prejudice, and only on the condition that Plaintiff pay *all* costs and attorneys' fees Kleinman has incurred in this case, as all such expenses are attributable solely to the fact that Plaintiff filed duplicative lawsuits and then prolonged this one long after their current excuse for wanting to dismiss came into focus.

## 2.0 LEGAL STANDARD

The discretion grants of voluntary dismissal are guided by consideration of whether the defendant would suffer prejudice and the plaintiff's motivations in seeking dismissal. *Kachwalla v. Twp. Of Edison*, 348 F.R.D. 215, 218 (D.N.J. 2024). The Court must “weigh the relevant equities and do justice between the parties in each case” when deciding a motion for voluntary dismissal. *United State ex rel. Haskins v. Omega Inst., Inc.*, 11 F. Supp. 2d 555, 570 (D.N.J. 1998). Justice and equity require that Plaintiff pay for the mess she made for no good reason.

## 3.0 ARGUMENT

### 3.1 Plaintiff's Motives

When considering a plaintiff's motives in seeking voluntary dismissal, a “core inquiry is whether improper ‘gamesmanship’ is potentially at play.” *Kachwalla*, 348 F.R.D. at 218. This includes looking at whether an alternative forum seems “favorable to the plaintiff from the perspective of choice of law, or a statute of limitations,” whether “the plaintiff's change of heart suggests bad faith,” whether “going forward in Forum 2 made better sense all along,” and whether seeking the alternative forum is “a way to dodge an unfavorable judicial ruling.” *Id.* at 218-19.

*Ferguson v. Eake*, 492 F.2d 26, 28-29 (3d Cir. 1974) found it was an abuse of discretion to permit voluntary dismissal where “the plaintiffs' primary reason for seeking dismissal [was] the desire to sue [the defendant] in an[other] action at law seeking damages.” *See also Hayden v. Westfield Ins. Co.*, 586 Fed. Appx. 835, 843 (3d Cir. 2014) (affirming denial of motion for voluntary dismissal where plaintiff's motive for dismissal was filing new action asserting the same claims in state court). This Court has also found it inappropriate to allow voluntary dismissal without prejudice where the plaintiff is trying to seek a “do-over” to avoid an adverse ruling. *Pringle v. Johnson & Johnson, Inc.*, 2024 U.S. Dist. LEXIS 146879, \*7 (D.N.J. Aug. 16, 2024).

Plaintiff's argument primarily rests on the assertion that it's completely normal and commonplace to file duplicative lawsuits in different courts. This is wrong, and the cases Plaintiff cites do not support her contention.

*Amorin v. Taishan Gypsum Co.*, 2019 U.S. Dist. LEXIS 240897 (S.D. Fla. Mar. 19, 2019), dealt with multi-district litigation involving over *ten thousand plaintiffs* from a dozen different states. The issues of personal jurisdiction there were exponentially more complicated than anything that could be at issue here, where we have a single plaintiff against a single defendant.

*Mueller v. Corr. Corp. of Am.*, 2013 U.S. Dist. LEXIS 14286 (D. Idaho Feb. 1, 2013), dealt with litigation filed by an inmate, and the language quoted by Plaintiff is from an off-handed comment by the court. The procedural posture between the two cases could not be more different; in *Mueller*, the plaintiff filed an initial suit that was dismissed due to failure to exhaust administrative remedies, then filed a subsequent suit after being released from custody that was time-barred. Here, Plaintiff filed two identical lawsuits in different courts within 24 hours of one another, when the statute of limitations was not even close to expiring. If Plaintiff had actually been concerned about a jurisdictional challenge and the statute of limitations running, she would have filed in Louisiana first then, if the issue of personal jurisdiction had not been resolved by the time the limitation period was about to run, filed suit here on the last possible day. But that's not what she did; she filed the duplicative suits as an abusive method of draining Kleinman's resources rather than as a "protective measure."

*Jones v. Cont'l Motors, Inc.*, 2012 U.S. Dist. LEXIS 94486, \*9-10 (S.D. Ala. July 6, 2012), is directly harmful to Plaintiff's position, as the court there noted the first-filed rule prohibits duplicative lawsuits from proceeding simultaneously, that there is a general principle among

federal courts to avoid duplicative litigation, and that “nothing could be more duplicative than forcing litigants to pursue two identical actions simultaneously in different fora.”

*D'Jamoos v. Pilatus Aircraft Ltd.*, 2009 U.S. Dist. LEXIS 91576 (E.D. Pa. Oct. 1, 2009), involved numerous plaintiffs bringing claims related to the deaths of passengers in a plane crash with complicated jurisdictional issues. The language Plaintiff quotes from this case was in the context of the court’s finding that transferring a case from one court to another under 28 U.S.C. § 1631 was appropriate, which just so happens to be the relief Kleinman has requested in the second-filed Louisiana action. *Id.* at \*9-10. *D'Jamoos* says nothing about the propriety of duplicative litigation or why voluntary dismissal should be permitted here.

*Union P.R. Co. v. Dep’t of Rev.*, 920 F.2d 581, 584 & n.9 (9th Cir. 1990), dealt with a 60-day deadline to file an appeal in tax court, necessitating a protective action to preserve the right to appeal. Plaintiff did not file her duplicate lawsuit near the close of her limitation period but rather filed her two suits almost simultaneously. There was no danger of the limitation period expiring when she chose to waste Kleinman’s resources with an unnecessary action.

*Gov’t of the Virgin Islands, Div. of Banking & Ins. v. Needle*, 861 F. Supp. 1054 (M.D. Fla. 1994), contains a discussion showing that Plaintiff’s tactics here are not legitimate. The court reiterated the principle that “the general rule is to avoid duplicative litigation” and “in the absence of compelling circumstances, the court initially seized of a controversy should be the one to decide the case.” *Id.* at 1055. While courts dealing with duplicative litigation sometimes issue stays, instead of outright dismissing duplicate lawsuits, this does not mean courts endorse such an approach. And in any event, the cases nearly uniformly find that the first-filed case (i.e., this action) should be the one to proceed.

Neither this Circuit nor this Court takes kindly to Plaintiff’s litigation tactics here. The Third Circuit in *Williams v. Tech. Mahindra Ams. Inc.*, 2024 U.S. App. LEXIS 31353, \*7, 9 (3d Cir. Dec. 10, 2024), recognized that where the first-filed rule applies (as it does here), a plaintiff may not file a duplicative action in another forum. This Court, in the context of a class-action suit, strongly disapproved of the same tactics Plaintiff has employed here. *See Mazzei v. Heartland Payments Sys., LLC*, 2023 U.S. Dist. LEXIS 166151, \*21 (D.N.J. Sept. 19, 2023), noting that:

it was Plaintiffs' litigation strategy—sounding loudly in forum shopping—that splintered this case into two forums. There is simply no good reason apparent to the Court to justify two opposing nationwide class actions with a single class of New Jersey residents carved-out and put into a subclass in a different forum. The only conclusion the Court can draw is that the Story plaintiffs' decision to carve-out the New Jersey class and institute a separate and virtually identical class action in this Court with a New Jersey subclass was an effort to have two chances at class certification. The Court will not tolerate a result that rewards such tactics.

Simply put, filing duplicative lawsuits is neither normal nor acceptable. There was no real dispute or uncertainty regarding personal jurisdiction in Louisiana and, even if there were, Plaintiff could have tried resolving that dispute in Louisiana before filing suit here. She did not. But perhaps Plaintiff was trying to be thorough, rather than efficient, though that explanation is similarly not credible in light of Plaintiff’s actions in this case. Based on her stated reasons for filing the two lawsuits, she should have sought dismissal of this action the moment Kleinman waived the issue of personal jurisdiction in Louisiana, over two months ago. But she did not. Instead, she requested a stay of this matter while waiting to see whether a Louisiana federal judge would rule in her favor on Kleinman’s motion to dismiss for improper venue (a motion which would have been obviated had she promptly sought dismissal of this action). In line with this “wait-and-see” approach, Plaintiff did not seek dismissal of this action until after the Court denied her motion to stay and criticized her litigation strategy. Plaintiff’s motives are obvious: she was

testing the waters in two different courts to see which she preferred. Doing so had the added benefit of wasting Kleinman's resources, which is a common tactic of SLAPP plaintiffs.

Aside from burdening Kleinman with unnecessary expense, a possible explanation for Plaintiff's duplicative litigation is an attempt to avoid an award of costs under Fed. R. Civ. P. 41(d). That rule provides that "[i]f a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court . . . may order the plaintiff to pay all or part of the costs of that previous action." Its purpose is to deter forum shopping and vexatious litigation. *Garza v. Citigroup Inc.*, 881 F.3d 277, 281-82 (3d Cir. 2018). If Plaintiff had waited until an adverse ruling in this Court to file her Louisiana action (or vice versa), Kleinman would have sought an award of costs under Rule 41(d). By filing the duplicative actions almost simultaneously, Plaintiff perhaps thinks she's found a clever way around this cost-shifting mechanism. The Court should not allow this result.

### **3.2 Prejudice to Kleinman**

In determining whether a defendant would suffer prejudice as a result of voluntary dismissal, courts consider factors including "(1) the expense of a potential second litigation; (2) the effort and expense incurred by defendant in preparation for trial in the present case; (3) the extent to which the case has progressed; and (4) plaintiffs diligence in bringing the motion to voluntarily dismiss." *Shamrock Creek, LLC v. Borough of Paramus*, 2015 U.S. Dist. LEXIS 81882, \*6 (D.N.J. June 23, 2015).

While this case has not gone through discovery yet, Kleinman has already incurred significant expense in defending himself, due in large part to preparing an Anti-SLAPP motion, which involves an amount of work comparable to drafting a summary judgment motion. This case has also had significantly more activity than the duplicative Louisiana action, which thus far has

only had a single briefed motion and no hearings or court decisions. Little to none of Kleinman's work on this case could be reused in the Louisiana litigation. Further, Plaintiff has not been diligent in seeking dismissal. Her purported reason for it existed over two months ago, yet she did nothing when she became aware of it. Rather, she waited until she made Kleinman spend a lot of money here, and she waited until she received an adverse ruling from this Court to seek dismissal.

If the Court were to permit voluntary dismissal here, with Plaintiff free to pursue her duplicative Louisiana case, then Kleinman would lose New Jersey's Anti-SLAPP protections, including a substantive immunity from suit<sup>2</sup> entirely, both in the form of early dismissal of Plaintiff's claims and his entitlement to attorneys' fees. Plaintiff's requested voluntary dismissal would thus be highly prejudicial to Kleinman's substantive rights.

NJ Rev Stat § 2A:53A-55(b) provides that where a plaintiff voluntarily dismisses an action without prejudice after an Anti-SLAPP motion is filed, the moving party is still entitled to a ruling on the motion and, if granted, an award of costs and fees. Kleinman, on two separate occasions, expressed his intent to file an Anti-SLAPP motion by seeking a premotion conference. If not for the premotion conference procedures, he would have filed his motion months ago. The Court should thus find, either by operation of NJ Rev Stat § 2A:53A-55(b) or by using its own discretion, that Plaintiff may not voluntarily dismiss this action until the Anti-SLAPP motion is resolved, including any motion for costs and fees if the motion is granted.

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<sup>2</sup> NJ Rev Stat § 2A:53A-57 provides that a defendant may immediately appeal an order denying an Anti-SLAPP motion, in whole or in part. The Ninth Circuit has found that the California Anti-SLAPP law's right to an immediate interlocutory appeal evidences a right to avoid litigation, not just a defense to liability, which creates a type of substantive immunity from suit. *Batzel v. Smith*, 333 F.3d 1018, 1025 (9th Cir. 2003). New Jersey's law, with its identical right to appeal, thus creates a substantive immunity from suit that would be lost if Plaintiff's motion for voluntary dismissal is granted. Accordingly, Kleinman should be permitted to maintain this substantive immunity here in New Jersey, now that he has educated the Plaintiff about its existence by invoking it. If the Plaintiff can cut and run from here, she must pay Anti-SLAPP fees.

In the alternative, the Court should use its discretion not to reward Plaintiff for her deliberately wasteful litigation tactics. It has already found that “*Plaintiff cannot file the same suit in two different districts and take a wait-and-see approach, waiting to see if the complaint in her preferred District will survive the defendant’s motion to dismiss challenge before she decides to voluntarily dismiss the action in this District where she does not wish to proceed. This hedging of her bets is not permissible and is simply not how orderly litigation works*” (ECF No. 35-2 at 19:10-17). There are two ways to properly disincentivize this kind of conduct: (1) allow dismissal, but only *with* prejudice; or (2) condition dismissal of this action on the payment of *all* Kleinman’s costs and attorneys’ fees incurred in this action, given that all such expense is due solely to Plaintiff’s improper litigation tactics. *See Carroll v. E One Inc.*, 893 F.3d 139, 146-47 (3d Cir. 2018) (noting that “attorneys’ fees and costs may be frequently awarded when dismissal is without prejudice” and that “courts have held that awarding attorneys’ fees and costs as a term of a Rule 41(a)(2) dismissal may be appropriate where such fees and costs were unnecessarily incurred”).

#### **4.0 CONCLUSION**

Plaintiff has been called out on her gamesmanship and has now decided that, in light of her motion to stay here being denied, she no longer wants to litigate in this Court. The Court should not allow this abusive litigation strategy and should stay all proceedings related to dismissal until after Kleinman’s Anti-SLAPP motion is resolved. In the alternative, the Court should permit dismissal of the Complaint, but only with prejudice or conditioned on payment of all attorneys’ fees Kleinman has incurred in this matter.

Dated: April 6, 2025.

Respectfully Submitted,

/s/ Vincent S. Verdiramo

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2025, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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