FILED

MAR 03 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM F. ARMSTRONG, Plaintiff-Appellee, v. NAN, INC., Defendant-Appellant.	No. 15-15818 D.C. No. 1:12-cv-00105-ACK-BMK MEMORANDUM[*]

Appeal from the United States District Court
for the District of Hawaii
Alan C. Kay, District Judge, Presiding

Submitted February 23, 2017[**]
Honolulu, Hawaii

Before: KOZINSKI, HAWKINS, and BEA, Circuit Judges.

Defendant-appellant Nan, Inc. ("Nan") appeals the district court's order dismissing plaintiff-appellee William Armstrong's ("Armstrong") state law age discrimination claim without prejudice. We affirm.

---

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before Armstrong's federal age discrimination claims went to trial, the district court exercised its discretion to dismiss his pendant state law age discrimination claim without prejudice. The court concluded that because of the divergence of elements and remedies available under federal versus Hawaii state law, state law remedies would predominate and there was a substantial risk of jury confusion in evaluating and applying the divergent law to the two age discrimination claims. Because this was not an abuse of discretion, we affirm. *See* 28 U.S.C. § 1367(c)(2), (4); *Cancellier v. Federated Dep't Stores*, 672 F.2d 1312, 1318 (9th Cir. 1982).

To the extent Nan argues Armstrong should be precluded from seeking punitive damages or pain and suffering damages in state court because he failed to develop such a claim in federal court, that is an issue for the state court to address in the first instance should Armstrong elect to refile in state court, and we express no opinion on the merits of this argument.

AFFIRMED.