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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
7

8 PAUL GRONDAL, a Washington
resident; and THE MILL BAY
9 MEMBERS ASSOCIATION, INC., a
Washington Non-Profit Corporation,
10

11 Plaintiffs,

12 vs.

13 UNITED STATES OF AMERICA, et al.,

14 Defendants.
15

No. 09-CV-00018-RMP

**FEDERAL DEFENDANTS’
MOTION TO DISMISS
REMAINING CLAIM AGAINST
WAPATO HERITAGE, LLC
UNDER FEDERAL RULE 41(a)(2)**

Noted Without Oral Argument

March 15, 2021

16 **I. INTRODUCTION**

17 Wapato Heritage, LLC’s (“WHL”) sole remaining involvement in this
18 matter is as a cross-claim defendant to a claim brought by the Federal Defendants
19 due to WHL’s failure to pay approximately \$12,000 during the final month of the
20 Master Lease. The Federal Defendants’ dismissal of this claim against WHL would
21 leave only the Federal Defendants and Plaintiffs as the only remaining parties, and
22 sole the determination left would be the amount of trespass damages owed by
23 Plaintiffs. *See* ECF No. 534 (parties listing what remains), ECF No. 644 (Court
24 dismissing all that WHL listed as remaining for it). Accordingly, granting Federal
25 Defendants motion to dismiss its claim against WHL removes WHL as a party
26 leading to a just, speedy, and inexpensive determination of what little remains in
27 this action.

II. LEGAL ANALYSIS

“A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) (citations omitted). The Ninth Circuit has repeatedly held that plain legal prejudice does not result because of claims or threats of “future litigation” in a separate forum. *Id.* at 976. “Plain legal prejudice” does not result merely because the WHL will be inconvenienced or may lose some tactical advantage in future litigation between it and Mill Bay in state court due to its failure to fulfill its settlement or contractual obligations with Mill Bay members. *See id.*

Furthermore, Federal Defendants request that the Court dismiss its sole remaining claim against WHL *with prejudice* removes any alleged prejudice to WHL. *See id.* (“That the district court here dismissed, with prejudice, the federal claims so they cannot be reasserted in another federal suit only strengthens our conclusion that the dismissal caused no legal prejudice and was not an abuse of discretion.”). Dismissal of this claim means that WHL is no longer a party to this action and has no risk of judgment against it by the Federal Defendants. Thus, WHL cannot be heard to complain of any prejudice, *nor would it have standing* to complain about what little remains in this case. *See, e.g., Navient Solutions, LLC v. Law Offices of Jeffrey Lohman, P.C.*, 2020 WL 3606385, at *3 (E.D.Va., 2020) (citing *Payne v. Exxon Corp.*, 121 F.3d 503, 510 (9th Cir. 1997)) (“It is uncontroversial that a party cannot move to compel discovery for a different litigant, even if they are both on the same side of the litigation.”).

The basis for the Federal Defendants’ request is to streamline trial, and that the cost and expense of maintaining this meritorious claim outweighs the nominal amount of anticipated recovery. Additionally, Federal Defendants acted diligently in bringing this motion for dismissal soon after the Court’s most recent order,

which allowed for this motion in order to narrow trial. *See generally, Santa Rosa Memorial Hospital v. Kent*, 688 Fed. Appx. 492, 494 (9th Cir. 2017) (affirming denial of request for fees and costs when voluntarily dismissed claim had merit).

III. CONCLUSION

Granting the Federal Defendants' motion greatly streamlines the resolution of what little remains in this case; reduces the number of parties for trial, if necessary; and reduces the number of unnecessary future filings by WHL and related expenses. Accordingly, the Federal Defendants respectfully request the Court grant this motion.

RESPECTFULLY SUBMITTED on this 22nd day of January, 2021.

William D. Hyslop
United States Attorney

/s/ Joseph P. Derrig
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Assistant United States Attorney

Certificate of Service

I hereby certify that on January 22, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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and hereby certify that due to Covid restrictions I will serve by United States Postal Service mail the document to the following non-CM/ECF participants:

FEDERAL DEFENDANTS' MOTION TO DISMISS REMAINING CLAIM AGAINST
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