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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

KELSEY CASCADIA ROSE JULIANA, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 6:15-cv-01517-TC

INTERVENOR-DEFENDANT THE
NATIONAL ASSOCIATION OF
MANUFACTURERS' MOTION TO
WITHDRAW

LR 7-1(a) Certification

Intervenor-Defendant The National Association of Manufacturers (“NAM”) certifies that it made a good faith effort to confer with the other parties regarding this motion. The other intervenor-defendants do not oppose NAM’s motion. The federal defendants take no position on whether the motion should be granted. Because they have yet to see the moving papers, the plaintiffs state that they cannot take a position at this time on the NAM’s motion to withdraw, but will have a position once they review the motion.¹

MOTION TO WITHDRAW

The NAM respectfully moves to withdraw as an intervenor-defendant from this case.

By way of background, NAM and two other trade associations moved to intervene in this matter, pursuant to Federal Rule of Civil Procedure 24, on November 12, 2015. Dkt. No. 14. Plaintiffs opposed the motion in full, Dkt. No. 33, and the Court heard oral argument in January 2016, Dkt. No. 38. The day after argument, the Court granted the motion to intervene as of right, concluding (1) that proposed intervenors had a “protectable interest” because this case could directly affect their businesses, (2) that those interests could be impaired if plaintiffs were to prevail, and (3) that proposed intervenors’ interests are not identical to the federal defendants’ interests. Dkt. No. 50. The Court also declined to address plaintiffs’ request to “preclude discovery” or impose other restrictions on the scope of intervention. Dkt. No. 50.

The NAM no longer seeks to pursue its right to participate as a party in this litigation and, therefore, now moves to withdraw. The Court has ample authority to grant that request, and there is good reason to do so.

¹ The plaintiffs have agreed that an intervenor-defendant which moves to withdraw on or before May 25, 2017, does not need to file responses to the plaintiffs’ requests for admissions on May 25, 2017.

As for the Court's authority, nothing about Rule 24's intervention process requires that a party's decision to pursue intervention—or a Court's decision to allow it—be an irreversible decision that can never be revisited. On the contrary, just as a plaintiff has the right to decide she no longer wishes to pursue a particular claim filed in a particular case, an intervening party may decide that it no longer wishes to pursue currently the particular interests and rights that led to intervention in a particular case.

That flexibility is inherent in the Federal Rules and has been recognized in other cases. Rule 24 provides prospective intervenors multiple paths to seek intervention “[o]n timely motion,” including circumstances under which a court “must” or “may permit” intervention. Fed. R. Civ. P. 24(a), (b). But in either respect, the decision to seek intervention is a discretionary choice, initiated by the movant and for which the court simply decides whether or not to “permit” the movant's request. *Id.*; *see also, e.g., Kourtis v. Cameron*, 419 F.3d 989, 998 (9th Cir. 2005) (“Intervention has been conceived as a device that permits a nonparty to become a party *when it wishes....*”), *abrogated on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). Logically, then, the same movant may reevaluate a decision to pursue involvement in a particular case, and courts have granted intervenors' requests to withdraw after intervention. *See, e.g., Order, Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co.*, No. 1:13-cv-01582, Dkt. No. 60 (S.D.N.Y. Apr. 1, 2013); *Order, Brown v. Detzner*, No. 3:12-cv-00852, Dkt. No. 58 (M.D. Fla. Apr. 29, 2013); *Minute Order, South Carolina v. United States*, No. 1:12-cv-00203 (D.D.C. May 24, 2012). In short, just as the NAM had the “right” to intervene in this case, it likewise must have the right to decide that it no longer wishes to participate in a case.

Beyond the Court's authority to grant the NAM's request, allowing withdrawal would also serve judicial economy and would not prejudice any of the remaining parties. Withdrawal

would reduce the number of parties to this proceeding and, accordingly, reduce the amount of discovery and avoid the possibility of duplicative discovery efforts and duplicative proceedings. Plaintiffs said as much in opposing intervention in the first place. Dkt. No. 33. By the same token, withdrawal would not prejudice any party. The federal defendants continue to seek dismissal of plaintiffs' claims, and plaintiffs do not bring any claims against the NAM. Because plaintiffs opposed the NAM's intervention altogether, moreover, they could not plausibly argue that they would suffer any prejudice through the NAM's withdrawal from their case against the federal government.

In sum, particularly in light of the fact that the NAM's withdrawal would not interfere with the proceedings at all, let alone "seriously interfere" with them, the Court should "freely grant[]" the request to withdraw from this case. *Dowell v. Bd. of Educ. of Okla. City Pub. Sch.*,

430 F.2d 865, 868 (10th Cir. 1970) (per curiam) (“In our opinion intervention and withdrawal should be freely granted so long as it does not seriously interfere with the actual hearings.”).

DATED this 22nd day of May 2017.

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by the following indicated method or methods on the date set forth below:

CM/ECF system transmission.

DATED this 22nd day of May 2017.

/s/ C. Marie Eckert _____

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