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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 AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS' MOTION TO WITHDRAW

LR 7-1(a) Certification

Intervenor-Defendant American Fuel & Petrochemical Manufacturers ("AFPM") certifies that it made a good faith effort to confer with the other parties regarding this motion. The other intervenor-defendants do not oppose AFPM's motion. The federal defendants take no position on whether the motion should be granted. Plaintiffs' counsel has not yet made a decision on whether to consent to the motion to withdraw.[1]

MOTION TO WITHDRAW

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

By way of background, AFPM 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.

AFPM no longer seeks to pursue its right to participate as an intervenor in the district court proceedings at this time and, therefore, now moves to withdraw. The Court has ample authority to grant that request, and there are good reasons to do so.

As for the Court's authority, nothing about Rule 24's intervention process requires that a

[1] The plaintiffs have agreed that an intervenor-defendant who 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.

party's decision to pursue intervention 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)); *see also Legal Aid Soc'y of Alameda Co. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980) (inquiry regarding intervention status should consider "[a]ll of the circumstances of a case" including "the substantially different position that had then been assumed by the Government as the principal defendant"). 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). As long as it "does not seriously interfere with the actual hearings," withdrawal "should be freely granted." *Dowell v. Bd. of Educ. of Okla. City Pub. Sch.*, 430 F.2d 865, 868 (10th Cir. 1970) (per curiam). In short, just as AFPM 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 AFPM's request, allowing withdrawal would serve judicial economy and would not prejudice any of the remaining parties. Although the federal defendants have, to date, made certain admissions in their answer, which they may later amend,[2] extensive expert witness discovery will be required if AFPM remains in the case, significantly prolonging the discovery phase of the litigation and trial. Plaintiffs even conceded as much in opposing intervention in the first place. *See, e.g.*, Dkt. No. 33 at 18 (urging Court to "place limitations on intervenors to preclude their conducting any discovery"). AFPM's withdrawal thus would result in judicial economy for all of the remaining parties and the Court by narrowing the contested issues.

By the same token, withdrawal would not prejudice any party. The federal defendants continue to seek dismissal of plaintiffs' claims in their entirety, and plaintiffs do not bring any claims against AFPM. Because the plaintiffs opposed AFPM's intervention altogether, moreover, they could not plausibly argue that they would suffer any prejudice through AFPM's withdrawal from their case against the federal government.

[2] Dkt. 149 at 12 n.5.

In sum, particularly in light of the fact that AFPM's withdrawal would not interfere with the proceedings at all, let alone "seriously interfere" with them, the Court should "freely grant[]"AFPM's request to withdraw from this case. *Dowell*, 430 F.2d at 868.

DATED this 25th 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 25th day of May 2017.

/s/ C. Marie Eckert

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