

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

Robert Lewis, et al.,

Plaintiff,

v.

United States of America, et al.,

Defendants.

Case No. 3:18-cv-05196-TLF

ORDER GRANTING IN PART  
MOTION FOR LEAVE TO DISMISS  
AND DENYING MOTION FOR  
SUMMARY JUDGMENT AS MOOT

Plaintiffs brought this action under 42 U.S.C. § 1983 and for common-law tort claims. Amended Complaint, Dkt. 16. The tort claims have been dismissed. Dkt. 37. Defendants have moved for summary judgment on the § 1983 claim. Dkt. 42.

Plaintiffs now move to voluntarily dismiss this case under Federal Rule of Civil Procedure (FRCP) 41(a)(2). Plaintiffs ask “that this Court grant leave to dismiss the case in Federal Court and to re-file the case in the Puyallup Tribal Court.” Dkt. 48-1. The defendants agree with the plaintiffs’ motion to dismiss, assert that the dismissal should be with prejudice, and object to the plaintiffs’ request for leave to file the case in Puyallup Tribal Court. Dkt. 49.

DISCUSSION

Rule 41(a)(2) governs the voluntary dismissal of an action in federal court. It provides that unless a plaintiff files a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or the parties stipulate to the dismissal of the action, “[a]n action may be dismissed at the plaintiff’s request only by court order, on terms that the court

1 considers proper.” *Id.* The decision to grant or deny a motion pursuant to Rule 41(a)(2) is within  
2 the sound discretion of the trial court and may be reviewed only for abuse of that discretion.  
3 *Zanowick v. Baxter Healthcare Corp.*, 850 F.3d 1090, 1093 (9th Cir. 2017).

4 The Court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a  
5 defendant can show that it will suffer plain legal prejudice from the dismissal. *Smith v. Lenches*,  
6 263 F.3d 972, 975 (9th Cir. 2001); *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th  
7 Cir. 1996) (finding that legal prejudice is prejudice to some legal interest, some legal claim, or  
8 some legal argument).

9 Rule 41 also provides that orders that fail to specify whether dismissal is with or without  
10 prejudice are to be interpreted as dismissals without prejudice. FRCP 41(a)(2); *Hargis v. Foster*,  
11 312 F.3d 404, 412 (9th Cir. 2002). The Court has broad discretion and FRCP 41(a) “does not  
12 contain a preference for one kind of dismissal or another.” *Hargis*, 312 F.3d at 412; 9 Charles  
13 Alan Wright & Arthur R. Miller, *FEDERAL PRACTICE AND PROCEDURE* § 2367 (3d ed. 2007)  
14 (“[I]f the plaintiff either moves for dismissal without prejudice or fails to specify whether the  
15 request is for dismissal with or without prejudice, the matter is left to the discretion of the court.  
16 The trial court may grant a Rule 41(a) dismissal without prejudice or may require that the  
17 dismissal be with prejudice.”).

18 Here, dismissal with prejudice is appropriate under Rule 41(a)(2).

19 A plaintiff cannot maintain a § 1983 action in federal court by alleging a deprivation of  
20 constitutional rights under color of tribal law. *Evans v. McKay*, 869 F.2d 1341, 1347 (9th Cir.  
21 1989). Plaintiffs concede based on defendants’ declarations “that the Defendants were not  
22 enforcing state or municipal laws at the time of the incident, but were only dealing with traffic  
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1 and parking ordinances of the Puyallup Tribe on Puyallup Tribal property. As such, 42 U.S.C.  
2 1983 et seq., is not applicable.” Dkt. 48, p. 2.

3 Plaintiffs concede their § 1983 lawsuit fails to state a claim for relief, as a matter of law,  
4 in this Court. *See R.J. Williams Co. v. Fort Belknap Housing Authority*, 719 F.2d 979, 981-82  
5 (9th Cir. 1983). Dismissal of that claim with prejudice is therefore appropriate. *Albrecht v. Lund*,  
6 845 F.2d 193, 195, *amended by* 856 F.2d 111 (9th Cir. 1988) (District Court’s dismissal with  
7 prejudice and without leave to amend was appropriate where any allegation of other facts  
8 consistent with the pleading at issue could not possibly cure the problem with the pleading).

9 Plaintiffs request, in addition to dismissal, “this Court grant leave . . . to re-file the case in  
10 the Puyallup Tribal Court.” Dkt. 48-1. The Court will not provide an opinion about whether any  
11 lawsuit may be filed by plaintiffs in Puyallup Tribal Court.

12 Accordingly, it is ORDERED:

- 13 - Plaintiff’s motion for voluntary dismissal, Dkt. 48, is GRANTED IN PART; THE  
14 COURT DENIES the request for an opinion regarding potential filing in Puyallup  
15 Tribal Court.  
16 - The amended complaint, Dkt. 16, is DISMISSED with prejudice.  
17 - Defendant’s motion for summary judgment, Dkt. 42, is DENIED as moot.

18 Dated this 25th day of March, 2019.

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22 Theresa L. Fricke  
23 United States Magistrate Judge  
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