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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Bank of the West, Inc.,

) No. CV-08-2220-PHX-FJM

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Plaintiff,

) **ORDER**

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vs.

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Organic Grain & Milling, Inc.,

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Defendant.

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The court has before it defendant’s motion to dismiss (doc. 22), plaintiff’s response (doc. 23), and defendant’s reply (doc. 24).

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Plaintiff Bank of the West, Inc. (the “Bank”) entered into a loan agreement with Desert Organics, LLC, to provide \$3,000,000 in working capital for Desert Organics’ farming business (“loan agreement”). The Bank obtained a security interest in Desert Organics’ crops and in the proceeds of the sale of the crops. The loan was guaranteed by ten individuals and entities (the “guarantors”). Desert Organics also entered into an “all outputs” contract with defendant Organic Grain and Milling, Inc., whereby Organic Grain agreed to purchase Desert Organics’ entire 2008 durum wheat crop, including a crop in Dateland, Arizona (the “Dateland crop”), and a crop in Willcox, Arizona (the “Willcox crop”). Desert Organics subsequently defaulted on its obligations under the loan agreement, prompting the

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1 Bank to perfect its lien against Desert Organics' accounts receivable, including receivables
2 due from the sale of the Dateland crop.

3 On September 30, 2008, the Bank filed an action against Desert Organics and the
4 guarantors in the Superior Court of Arizona in Maricopa County seeking damages for breach
5 of contract in the amount of \$3,037,054.60 ("state court action"). On February 20, 2009,
6 Desert Organics filed for bankruptcy protection.

7 The Bank alleges that on June 6, 2008, it entered into a written contract with Organic
8 Grain and Desert Organics whereby Organic Grain agreed to pay the Bank directly for the
9 value of the Dateland crop after deducting a maximum of \$72,000 for seed, harvesting, and
10 transportation costs. The total value of the Dateland crop was \$243,324.07. Therefore, the
11 Bank claims it was entitled to a payment from Organic Grain in the amount of \$171,324.07.
12 Instead, Organic Grain issued a check in the amount of \$46,915.32 only, asserting that it is
13 entitled to an offset of \$196,408.75 for losses it claims were the result of Desert Organics'
14 failure to properly irrigate the Willcox crop. The Bank then filed this action in superior court
15 against Organic Grain alleging *inter alia* breach of contract, fraud, misrepresentation, and
16 unjust enrichment. Organic Grain filed a counterclaim against the Bank, asserting claims of
17 breach of contract and intentional interference with contract. Organic Grain now moves to
18 dismiss this case pursuant to Rules 12(b)(7), (c) and 19(b), Fed. R. Civ. P., arguing that
19 Desert Organics and the guarantors are necessary and indispensable parties to this action.

20 An absentee party is a "necessary party" under Rule 19(a), Fed. R. Civ. P., if (1) the
21 court "cannot accord complete relief among existing parties" without joinder, or (2) the
22 absentee party "claims an interest relating to the subject of the action" and is so situated that
23 disposing of the action without joinder may (a) "as a practical matter impair or impede the
24 person's ability to protect the interest," or (b) "leave an existing party subject to a substantial
25 risk of incurring double, multiple, or otherwise inconsistent obligations because of the
26 interest." Fed. R. Civ. P. 19(a). A necessary party must be joined under Rule 19(a) if the
27 "joinder will not deprive the court of subject-matter jurisdiction." An "indispensable party"
28 is a necessary party under Rule 19(a), but whose joinder is not feasible, and whose absence

1 creates such an overwhelming potential for harm that “in equity and good conscience” the
2 action should be dismissed. Fed. R. Civ. P. 19(b).

3 We conclude that Desert Organics and the guarantors are not necessary parties to this
4 action. First, we can accord complete relief as between the Bank and Organic Grain. The
5 only issue presented in this action is whether Organic Grain properly offset its claim against
6 Desert Organics by reducing the amount due to the Bank. That question is resolved by
7 examination of the agreement, if any, between the Bank and Organic Grain, as well as the
8 effect of the Bank’s perfected interest in the crop proceeds. Whether Organic Grain has a
9 claim against Desert Organics arising out of an unrelated contract does preclude our ability
10 to accord complete relief as between Organic Grain and the Bank.

11 Moreover, “[j]oinder is ‘contingent . . . upon an initial requirement that the absent
12 party *claim* a legally protected interest relating to the subject matter of the actions.’” United
13 States v. Bowen, 172 F.3d 682, 689 (9th Cir. 1999) (emphasis in original) (citation omitted).
14 Neither Desert Organics, the bankruptcy estate, nor the guarantors has claimed any interest
15 in this action. Even if the absent parties had claimed an interest, there is no risk that Organic
16 Grain will incur double or inconsistent liability. If the Bank prevails in the instant action,
17 Organic Grain will pay the amount due for the Dateland crop. It could not be held liable for
18 payment of the Dateland crop a second time.

19 Even if we had concluded that Desert Organics and the guarantors are necessary
20 parties under Rule 19(a), we would nevertheless conclude that they are not indispensable
21 parties under Rule 19(b). If a person who is required to be joined under Rule 19(a) cannot
22 be joined, we must determine whether the person’s absence creates such an overwhelming
23 potential for harm that “in equity and good conscience” the action should be dismissed. Fed.
24 R. Civ. P. 19(b). In making this determination, we will consider factors such as (1) the extent
25 to which a judgment rendered in a person’s absence might prejudice either that person or the
26 existing parties, (2) the extent to which any prejudice could be lessened or avoided by the
27 court, (3) whether the judgment rendered in the person’s absence would be adequate; and (4)

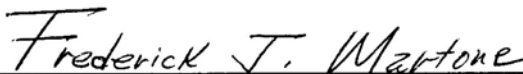
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1 whether the plaintiff would have an adequate remedy if the action were dismissed for
2 nonjoinder. Fed. R. Civ. P. 19(b).

3 Here, the joinder of Desert Organics and the guarantors would defeat diversity
4 jurisdiction and therefore their joinder is not feasible. Thus, we turn to the question of
5 prejudice. As discussed above, Organic Grain will not be prejudiced by nonjoinder. There
6 is virtually no chance of double or inconsistent liability. Any claim that Organic Grain has
7 against Desert Organics for breach of contract can be presented in the bankruptcy court. Nor
8 would Desert Organics or the guarantors be prejudiced by nonjoinder. First, they have
9 asserted no interest in this litigation. Any judgment collected by the Bank in the present
10 action will serve to reduce their indebtedness to the Bank. Moreover, any interest Desert
11 Organics or the guarantors has in the subject matter of this litigation is adequately
12 represented by the Bank, which holds a perfected security interest in all of the Dateland crop
13 proceeds.

14 Therefore, we conclude that neither Desert Organics nor the guarantors are necessary
15 or indispensable parties under Rule 19, Fed. R. Civ. P. Accordingly, **IT IS ORDERED**
16 **DENYING** defendant's motion to dismiss (doc. 22).

17 DATED this 1st day of December, 2009.

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 Frederick J. Martone
23 United States District Judge
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