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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 GB CAPITAL HOLDINGS, LLC,  
12 a California Limited Liability  
13 Company,

Plaintiff,

14 v.

15 S/V GLORI B, a 1977 Sailing  
16 Vessel of Approximately 27-Feet  
17 in Length, U.S.C.G. Official No.  
18 598405 and All of Her Engines,  
19 Tackle Accessories, Furnishings  
and Appurtenances, in rem,

Defendant.  
20

Case No.: 18cv312-WQH-AGS

**ORDER**

21 HAYES, Judge:

22 The matter before the Court is the Motion to Dismiss filed by Plaintiff GB Capital  
23 Holdings, LLC. (ECF No. 55).

24 **I. PROCEDURAL BACKGROUND**

25 On February 2, 2018, Plaintiff GB Capital Holdings, LLC, as the agent of San Diego  
26 Mooring Company, initiated this action by filing a verified Complaint. (ECF No. 1).  
27 Jeffrey G. Heston, proceeding pro se, filed a Statement of Interested Parties stating “I,  
28

1 Jeffrey G. Heston, am the sole owner of the Sailing Vessel ‘Glori B’, document number  
2 598405 and herein-named Defendant in this matter before this Court.” (ECF No. 16).

3 On April 10, 2018, an arrest warrant for the Defendant Vessel was issued, and Pier  
4 32 Marina was appointed as substitute custodian. (ECF No. 6).

5 On November 29, 2018, the Court denied a motion to dismiss filed by Heston. (ECF  
6 No. 25).

7 On December 21, 2018, Heston filed an Answer to the Complaint. (ECF No. 28).  
8 The Answer “enters a general denial of lack of jurisdiction and . . . submits an affirmative  
9 defense of res judicata to all allegations made in the Complaint.” *Id.* at 1. The Answer  
10 states that there is no evidence of a maritime lien in this case, and “begs the Court to release  
11 the vessel from her bonds, order the Plaintiff to restore her taken value, and return to the  
12 contracted status quo prior to the resolution of this controversy.” (ECF No. 28).

13 On January 22, 2019, the Court issued an Order granting GB Capital’s motion for  
14 interlocutory vessel sale and credit bid. (ECF No. 32).

15 On January 24, 2019, Heston filed a notice of appeal as to the January 22, 2019  
16 Order. (ECF No. 33).

17 On February 25, 2019, the Court denied a motion to stay and a motion to strike filed  
18 by Heston. (ECF No. 46).

19 On February 26, 2019, the Court of Appeals declined to stay this Court’s January  
20 22, 2019 Order pending appeal. (ECF No. 48).

21 On February 27, 2019, GB Capital purchased the Defendant Vessel on a credit bid  
22 of \$6,000 at the auction held by the U.S. Marshal. (ECF No. 54).

23 On June 6, 2019, GB Capital filed the Motion to Dismiss. (ECF No. 55).

24 On June 23, 2019, Heston filed a response opposing the Motion. (ECF No. 56).

25 On July 3, 2019, GB Capital filed a reply supporting the Motion. (ECF No. 57).

## 26 **II. FACTUAL BACKGROUND**

27 In the verified Complaint, GB Capital alleges that San Diego Mooring Company  
28 (SDMC) supplied the Defendant Vessel, “a 1977 Sailing Vessel of Approximately 27-Feet

1 in Length, U.S.C.G. Official No. 598405,” a berth in San Diego Bay. (ECF No. 1 at 1–2).  
2 GB Capital alleges that under the moorage contract, the vessel must undergo an annual  
3 safety inspection. *Id.* at 2–3. GB Capital alleges that the owner of the boat, Heston,  
4 declined the inspection. *Id.* at 3–4. GB Capital alleges that SDMC ordered Heston to  
5 remove the boat, and that Heston refused. *Id.*

6 GB Capital alleges that the Defendant Vessel was towed to an impound location on  
7 March 25, 2016 and has not been retrieved. *Id.* at 4, 8. GB Capital alleges that Heston  
8 “has repeated and consistently refused to submit his claims for resolution in binding  
9 arbitration,” as ordered in a prior litigation. *Id.* at 7–8. GB Capital alleges that Heston has  
10 declined GB Capital’s repeated offers to waive its claims against Heston and the vessel if  
11 Heston “simply retrieves and relocates his vessel.” *Id.* GB Capital seeks in rem relief  
12 against the vessel for breach of maritime contract, trespass, and quantum meruit. GB  
13 Capital alleges damages of \$55,728.51 in accrued wharfage fees and other costs as of  
14 February 7, 2018. *Id.* at 9.

### 15 III. THE PRIOR LITIGATION

16 On April 15, 2016, Heston sued GB Capital under admiralty and maritime  
17 jurisdiction to recover possession of the vessel and damages. *Heston v. GB Capital*  
18 *Holdings, LLC*, Civ. No. 16cv912.

19 On July 1, 2016, GB Capital filed a motion to compel arbitration. Heston did not  
20 file a response. On August 23, 2016, the Court ordered arbitration as to the moorage  
21 contract.

22 On September 13, 2016, Heston filed a motion for relief from the Court’s August  
23 23, 2016 Order, pursuant to Federal Rule of Civil Procedure 60(b)(1)–(3). On December  
24 15, 2016, the Court denied Heston’s motion for relief from judgment.

25 On October 23, 2017, Heston filed a second motion for relief from the Court’s  
26 August 23, 2016 Order, on various grounds, including that the “Maritime Contract for  
27 Private Wharfage” is not cognizable in admiralty. On January 5, 2018, the Court denied  
28 Heston’s motion for relief.

1 On January 26, 2018, Heston filed a notice of appeal. On August 21, 2018, the Court  
2 of Appeals for the Ninth Circuit concluded this Court did not abuse discretion by denying  
3 relief from the August 23, 2016 Order. On September 4, 2018, Heston filed a petition for  
4 panel rehearing and petition for rehearing en banc with the Court of Appeals. On January  
5 3, 2019, the Court of Appeals denied the petition for rehearing en banc.

#### 6 IV. DISCUSSION

7 Plaintiff GB Capital moves for dismissal of this action with prejudice under Rule  
8 41(a)(2) because “[t]here [is] no reason in law or logic to further maintain the action at bar”  
9 and there would be no plain legal prejudice to the non-movant. (ECF No. 55-2 at 6). GB  
10 Capital asserts that the Defendant Vessel was sold and that pursuing entry of a judgment  
11 against the Defendant Vessel “would serve no legitimate purpose.” *Id.* at 5. GB Capital  
12 asserts that Heston is not a named Defendant in this action and did not respond to GB  
13 Capital’s requests to stipulate to dismissal.

14 Heston contends the Court should not dismiss this action because the Court allowed  
15 this action to proceed, which vacates the order compelling arbitration in the previous  
16 action, *Heston v. GB Capital Holdings, LLC*, Civ. No. 16cv912. Heston contends that the  
17 Defendant Vessel has a right to trial under the Fifth and Fourteenth Amendments. Heston  
18 asserts that “the Defendant and her interested parties were made to stand quietly patient  
19 while the Court engaged in rote procedure to the favor of the Plaintiff GB Capital.” (ECF  
20 No. 56 ¶ 1). Heston asserts that the “Defendant Vessel and her interested parties have  
21 stated compulsory counterclaims” against GB Capital and that the Defendant Vessel moves  
22 to sever the alleged counterclaims from this matter. *Id.* ¶ 2.

23 After the opposing party has served an answer or motion for summary judgment, “an  
24 action may be dismissed at the plaintiff’s request only by court order, on terms that the  
25 court considers proper,” unless there is “a stipulation of dismissal signed by all parties who  
26 have appeared.” Fed. R. Civ. P. 41(a). “[T]he decision to grant a voluntary dismissal under  
27 Rule 41(a)(2) is addressed to the sound discretion of the District Court . . . .” *Hamilton v.*  
28 *Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). “A district court should

1 grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show  
2 that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972,  
3 975 (9th Cir. 2001). *Smith* provides:

4 [L]egal prejudice means prejudice to some legal interest, some legal claim,  
5 some legal argument. . . . [U]ncertainty because a dispute remains unresolved  
6 or because the threat of future litigation causes uncertainty does not result in  
7 plain legal prejudice. . . . Also, plain legal prejudice does not result merely  
8 because the defendant will be inconvenienced by having to defend in another  
9 forum or where a plaintiff would gain a tactical advantage by that dismissal.

10 *Id.* at 976 (quotations and alterations omitted).

11 Supplemental Admiralty and Maritime Claims Rule E(9)(a) of the Federal Rules of  
12 Civil Procedure states,

13 On application of a party, the marshal, or other person having custody of the  
14 property, the court may order all or part of the property sold--with the sales  
15 proceeds, or as much of them as will satisfy the judgment, paid into court to  
16 await further orders of the court--if:

- 17 (A) the attached or arrested property is perishable, or liable to deterioration,  
18 decay, or injury by being detained in custody pending the action;  
19 (B) the expense of keeping the property is excessive or disproportionate; or  
20 (C) there is an unreasonable delay in securing release of the property.

21 Fed. R. Civ. P., Supp. Adm. R. E(9)(a)(i). “The interlocutory sale of a vessel is not a  
22 deprivation of property but rather a necessary substitution of the proceeds of the sale, with  
23 all of the constitutional safeguards necessitated by the in rem process.” *Ferrous Fin. Servs.*  
24 *Co. v. O/S Arctic Producer*, 567 F. Supp. 400, 401 (W.D. Wash. 1983). When a vessel is  
25 “released and other security substituted” in an in rem proceeding, “the owner bears no  
26 personal liability,” “[t]he vessel is sold solely to satisfy the lien,” and “[if]f the proceeds of  
27 the sale are inadequate, there is no liability on the owner’s part for the residue.” *Belcher*  
28 *Co. of Ala. v. M/V Maratha Mariner*, 724 F.2d 1161, 1165 (5th Cir. 1984). The following  
provision of the local admiralty rules applies after an interlocutory vessel sale:

At the conclusion of the [interlocutory vessel] sale, the marshal must forthwith  
file a written report to the judge of the fact of sale, the price obtained and the  
name and address of the buyer. The clerk of the district court must endorse

1 upon such report the time and date of its filing. If within three days, exclusive  
2 of Saturdays, Sundays, and legal holidays, no written objection is filed, the  
3 sale will stand confirmed as of course, without the necessity of any affirmative  
4 action thereon by a judge . . . . A party filing an opposition to the sale, whether  
5 seeking the reception of a higher bid or a new public sale by the marshal, must  
6 give prompt notice to all other parties and to the purchaser. Such party must  
7 also, prior to filing an opposition, secure the marshal's endorsement upon it  
8 acknowledging deposit with the marshal of the necessary expense of keeping  
9 the property for at least five days. Pending the judge's determination of the  
10 opposition, such party must also advance any further expense at such times  
11 and in such amounts as the marshal will request, or as a judge orders upon  
12 application of the marshal or the opposing party. Such expense may later be  
13 subject to taxation as costs. In the event of failure to make such advance, the  
14 opposition must fail without necessity for affirmative action thereon by a  
15 judge. If the opposition fails, the expense of keeping the property during its  
16 pendency must be borne by the party filing the opposition.

17 S.D. Cal. Civ. R. E.1(e)(2).

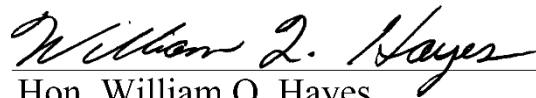
18 In this case, the record reflects no written objection to the report of the sale filed by  
19 the U.S. Marshal on April 2, 2019. (ECF Nos. 49–51). The sale stands “confirmed as of  
20 course, without the necessity of any affirmative action thereon by a judge.” *See* S.D. Cal.  
21 E.1(e)(2). Heston's ownership of the Defendant Vessel terminated upon confirmation of  
22 sale. The Defendant Vessel was purchased on a credit bid of \$6,000 at the interlocutory  
23 sale, which is less than the \$55,728.51 maritime lien alleged in the verified complaint. GB  
24 Capital states that it seeks no further remedy from the Defendant Vessel. GB Capital seeks  
25 no remedy in this in rem action from Heston, who is not alleged to be personally liable and  
26 appears only to litigate on behalf of the Defendant Vessel. *See Belcher*, 724 F.2d at 1165.  
27 The record reflects no counterclaims made by the Defendant Vessel against GB Capital.  
28 The record demonstrates that the Defendant Vessel would suffer no “plain legal prejudice”  
from the dismissal of this action. *See Hamilton*, 679 F.2d at 145; *see also Elf-Man, LLC*  
*v. Lamberson*, No. 13-CV-0395-TOR, 2014 WL 12634827, at \*1 (E.D. Wash. July 10,  
2014) (“[B]ecause Elf-Man moves to dismiss its claims with prejudice, the court finds that  
there is no plain legal prejudice to Lamberson.”).

1 GB Capital, the plaintiff in this action, requests that the Court dismiss this action  
2 with prejudice. The Court finds that dismissal with prejudice is appropriate in this case.  
3 *See Smith*, 263 F.3d at 976 (dismissing plaintiff’s federal law causes of action with  
4 prejudice on plaintiff’s motion for voluntary dismissal under Rule 41(a)(2) was not an  
5 abuse of discretion); *see also Elf-Man*, No. 13-CV-0395-TOR, 2014 WL 12634827, at \*1–  
6 2 (granting plaintiff’s motion to dismiss plaintiff’s claims with prejudice).

7 **V. CONCLUSION**

8 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 55) filed by  
9 Plaintiff GB Capital Holdings, LLC is GRANTED and this action is dismissed with  
10 prejudice.

11 Dated: August 2, 2019

  
12 Hon. William Q. Hayes  
13 United States District Court  
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