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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT NINTEMAN,

Plaintiff,

v.

THE DUTRA GROUP and R.E. STAITE
ENGINEERING, INC.,

Defendants.

Case No. 18-cv-1222-MMA (AGS)

**ORDER DENYING JOINT MOTION
TO DISMISS PLAINTIFF’S THIRD
CAUSE OF ACTION AGAINST
DEFENDANT THE DUTRA GROUP**

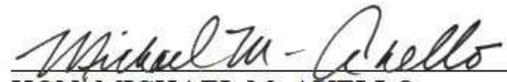
[Doc. No. 57]

Plaintiff Robert Ninteman (“Plaintiff”) and Defendant The Dutra Group (“Dutra”) jointly move to dismiss Plaintiff’s third cause of action for unseaworthiness against Dutra only. *See* Doc. No. 57. The parties do not state the legal basis for dismissal, but the Court infers the parties move to dismiss pursuant to Federal Rule of Civil Procedure 41(a). The Ninth Circuit has held that “we agree with those courts that have held a plaintiff may not use Rule 41(a)(1)(i) to dismiss, unilaterally, a single claim from a multi-claim complaint.” *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir. 1988). “Instead, withdrawals of individual claims against a given defendant are governed by Fed.R.Civ.P. 15, which addresses amendments to pleadings.” *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005); *see also Gen. Signal*

1 *Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995) (“[W]e
2 have held that Rule 15, not Rule 41, governs the situation when a party dismisses some,
3 but not all, of its claims.”). Here, dismissal of the third cause of action against Dutra
4 would not dismiss all of Plaintiff’s claims against Dutra: Plaintiff’s first and fourth causes
5 of action against Dutra for “Jones Act negligence” and “maintenance and cure and
6 unearned wages” would remain. *See* Doc. No. 33 ¶¶ 1–9, 21–23. Thus, because Dutra
7 would remain in this action even if the third cause of action were dismissed, dismissal
8 pursuant to Federal Rule 41(a) is improper. *See Gen. Signal Corp.*, 66 F.3d at 1513
9 (“Rule 41 is reserved for circumstances in which the result of the alleged dismissal is that
10 one or all of the defendants are released from the action.”). Accordingly, the Court
11 **DENIES** the parties’ joint motion without prejudice.

12 **IT IS SO ORDERED.**

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14 Dated: September 10, 2020

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16 HON. MICHAEL M. ANELLO
17 United States District Judge
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