

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

---

ENVIRONMENTAL DIMENSIONS, INC.,

Plaintiff,

v.

No. 1:16-cv-1056-WJ-JHR

ENERGYSOLUTIONS GOVERNMENT  
GROUP, INC.,

Defendant.

**MEMORANDUM OPINION AND ORDER ON DEFENDANT’S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**THIS MATTER** is before the Court on Defendant’s Motion for Partial Summary Judgment on Environmental Dimensions, Inc.’s Tortious Damage Claim [Doc. 105], filed November 27, 2018. In Plaintiff’s response, Plaintiff consented to dismissal of the claim. Doc. 110 at 3 (“[Environmental Dimensions, Inc.] consents to dismissal of the Tortious Damage Claim”). Defendant’s motion, therefore, is **GRANTED**. Plaintiff also requested in its response that the Court sanction Defendant and award attorney fees for failing to determine whether the motion was opposed. The remainder of this opinion concerns Plaintiff’s request.

District of New Mexico Local Rule 7.1(a) provides that a “Movant must determine whether a motion is opposed, and a motion that omits recitation of a good-faith request for concurrence may be summarily denied.” The purpose of the rule is to facilitate communication between counsel to prevent the filing of motions that do not require the Court’s intervention to resolve.

Plaintiff argues that Defendant failed to confer with Plaintiff to determine whether Plaintiff would oppose the motion and, therefore, should be sanctioned and required to pay attorney fees

for wasting time and resources. Doc. 110 at 1-2. Although Defendant did not explicitly request whether Plaintiff opposed the motion, Defendant put Plaintiff on notice of the motion in Defendant's September 21, 2018 email to Plaintiff:

We have drafted a motion for summary judgment which we plan to file right away. It is overlength from the 27 pages permitted for the brief and our exhibits are more than the 50 pages permitted. The rules contemplate that we meet and confer before seeking leave to file an overlength brief and exhibits. The brief is approximately 68 pages inclusive of caption, signature, and certificate of service, and about 26 pages of argument. *The summary judgment motion covers all nine causes of action in this litigation*, so it took some extra pages to deal with the breadth of the case.

Doc. 120 at 3 (*emphasis added*). When Plaintiff responded to Defendant's email three days later, Plaintiff did not indicate that it would consent to dismissal of the tortious damage claim. *Id.* The Court finds that Defendant's email to Plaintiff sufficiently satisfied the purpose of Rule 7.1(a) by informing Plaintiff of Defendant's intent to file the motion.

**IT IS THEREFORE ORDERED** that Defendant's Motion for Partial Summary Judgment on Environmental Dimensions, Inc.'s Tortious Damage Claim [Doc. 105] is **GRANTED**. Plaintiff's tortious damage claim is dismissed.

**IT IS FURTHER ORDERED** that Plaintiff's request that the Court sanction Defendant and award attorney fees for failing to determine whether the motion was opposed is **DENIED**.

  
\_\_\_\_\_  
**WILLIAM P. JOHNSON**  
**CHIEF UNITED STATES DISTRICT JUDGE**