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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 CLAYTON OWEN,

9 Plaintiff,

10 v.

11 DIAMOND B CONSTRUCTORS,  
12 INC., et al.,

Defendants.

C17-1566 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) This matter comes before the Court on (1) Defendant ASAP Drug  
16 Solutions, Inc.’s (“ASAP”) Motion to Dismiss, docket no. 7 (the “ASAP Motion”), and  
17 (2) Defendant Diamond B Constructors, Inc.’s (“Diamond B”) Motion to Dismiss  
18 Plaintiff’s Complaint, docket no. 10 (the “Diamond B Motion”), in which Defendant BG  
19 America Inc. (“BP”) joins, *see* docket no. 15. Plaintiff’s Complaint for Damages and  
20 Injunctive Relief, docket no. 1-2 (the “Complaint”), asserts four causes of action against  
21 Diamond and BP: (1) violation of 29 U.S.C. § 185(a), alleging that “BP and Diamond B  
22 breached Article 24 of the Northwest Washington Building & Construction Trades  
23 Council Site Agreement[;]”<sup>1</sup> (2) wrongful termination in violation of public policy; (3)

20 <sup>1</sup> The Court will hereinafter refer to this agreement as the “CBA.” Plaintiff expressly  
21 refers to the CBA at ¶ 5.2 of the Complaint and the Court can consider the CBA in connection  
22 with the pending motions to dismiss. *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998).  
23 No party disputes the authenticity of the copy of the CBA attached as Exhibit A to the  
Declaration of Peter Chapman, docket no. 11, and the Court will use that copy for purposes of  
resolving these motions.

1 negligence; and (4) defamation.<sup>2</sup> Plaintiff also asserts his negligence and retaliation  
2 claims against ASAP. The Complaint specifically alleges that “[t]he Defendant(s) named  
3 above, in their individual capacity, acted in an unlawful manner, both intentionally and/or  
4 negligently, which deprived the Plaintiff of clearly established, statutorily-protected  
5 rights under [the CBA], which did proximately cause illegal termination, negligence, and  
6 defamation.” Complaint at ¶ 1.6.

7 (2) The Diamond B Motion, docket no. 10, is GRANTED. Article 13 of the  
8 CBA requires Plaintiff to follow a set of “grievance-arbitration” procedures for “[a]ny  
9 question or dispute arising out of” the CBA. See CBA at ¶¶ 13.2, 13.3. Plaintiff does not  
10 argue that he ever attempted to follow these grievance procedures and, instead, alleges  
11 that Plaintiff never filed any such grievance. See Complaint at ¶ 4.6. “[E]mployees  
12 wishing to assert contract grievances must *attempt* use of the contract grievance  
13 procedure agreed upon by employer and union as the mode of redress.” *Republic Steel*  
14 *Corp. v. Maddox*, 379 U.S. 650, 652 (1965); see also *Rice v. Providence Reg’l Med. Ctr.*  
15 *Everett*, No. C09–482 RSM, 2009 WL 2342449, at \*5 (W.D. Wash. July 29, 2009)  
16 (Martinez, J.) (granting motion to dismiss where plaintiff failed to exhaust grievance  
17 procedures in a collective bargaining agreement). Plaintiff’s right to invoke the CBA’s  
18 grievance procedures are now time-barred (see CBA, Article 13.3(b)), and his CBA claim  
19 is DISMISSED with prejudice.

20 (3) Plaintiff’s remaining tort claims are preempted by federal labor law. State  
21 law claims may be preempted if they depend on an interpretation of the CBA. *Truex v.*  
22 *Garrett Freightlines, Inc.*, 784 F.2d 1347, 1350 (9th Cir. 1985). The Complaint explicitly  
23 acknowledges that the Defendants’ alleged misconduct deprived Plaintiff of his rights  
under the CBA and proximately caused the purported illegal termination, negligence, and  
defamation. Complaint at ¶ 1.6. Beyond this allegation, the core of Plaintiff’s state law  
claims is his assertion that the Defendants breached Article 24 of the CBA by failing to  
apply the ASAP Contractor Drug and Alcohol Consortium Substance Abuse Policy.  
Plaintiff expressly premises his Second Cause of Action for Wrongful Termination in  
Violation of Public Policy on the allegations that BP and Diamond B “breached the  
applicable sections of the CBA and applicable craft and trade policies.” Complaint at ¶  
6.2. This claim necessarily depends on an interpretation of the CBA and its policies to  
determine whether a breach occurred. While Plaintiff’s Third Cause of Action for  
negligence does not expressly reference the CBA, it does not identify what duty the  
Defendants allegedly owe. See *id.* at ¶¶ 7.1, 7.2. When read together with the remaining  
allegations in the Complaint, which Plaintiff incorporates by reference in his negligence  
claim, the only plausible “duty” is the one purportedly created by the CBA. Thus,  
Plaintiff’s negligence claim also depends on the CBA. See also *Guardado v. Cascadian*

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<sup>2</sup> The Court will refer to the First Cause of Action, Complaint at ¶¶ 5.1–5.2, as the “CBA claim,” and the Second through Fourth Causes of Action, *id.* at ¶¶ 6.1–8.2 collectively as the “tort claims.”

1 *Bldg. Mgmt.*, No. C16-0303JLR, 2016 WL 3105041, at \*3 (W.D. Wash. June 1, 2016)  
2 (Robart, J.) (plaintiff cannot avoid “preemption by artfully pleading their CBA claim” to  
3 evade dismissal). Likewise, Plaintiff’s Fourth Cause of Action for Defamation alleges  
4 that certain false statements “are based on an illegal drug screening of Plaintiff, and  
5 illegal termination of Plaintiff . . . .” Complaint at ¶ 8.2. When read in context of the  
6 Complaint’s remaining allegations, the only “illegality” alleged by Plaintiff is the  
7 purported breach of Article 24 of the CBA. *See Truex*, 784 F.2d at 1350 (characterizing  
8 alleged conduct as “improper” implied existence of standards in the CBA). The  
9 defamation claim therefore also substantially depends on the CBA. For these reasons,  
10 Plaintiff’s tort claims are preempted by federal labor law and are DISMISSED with  
11 prejudice.

12 (4) For the reasons set forth in Paragraph 3 of this Minute Order, the ASAP  
13 Motion, docket no. 7, is also GRANTED. Plaintiff’s negligence and defamation claims  
14 against ASAP are DISMISSED with prejudice. Because the Court concludes that these  
15 claims are preempted by federal law, it does not address whether the Court has personal  
16 jurisdiction over ASAP or whether ASAP has been properly served. ASAP’s motion to  
17 strike, docket no. 25 at 3, is STRICKEN as moot.

18 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of  
19 record.

20 Dated this 19th day of January, 2018.

21 William M. McCool  
22 Clerk

23 s/Karen Dews  
Deputy Clerk