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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GIG HARBOR MARINA, INC.;  
STANLEY STEARNS and JUDITH  
STEARNS, husband and wife,

Plaintiffs,

v.

CITY OF GIG HARBOR, a Washington  
municipal corporation,

Defendant.

CASE NO. C09-5726BHS

ORDER GRANTING  
PLAINTIFFS' UNOPPOSED  
MOTION FOR VOLUNTARY  
DISMISSAL OF FEDERAL  
CLAIMS AND REMANDING  
REMAINING CLAIMS TO  
STATE COURT

This matter comes before the Court on Plaintiffs' motion for voluntary dismissal of their federal claims pursuant to Fed. R. Civ. P. 41(a) and their motion for remand to state court for the remaining claims (Dkt. 8). The Court has considered the pleadings filed in regard to the motion and the remainder of the file and hereby dismisses the federal claims and remands the remaining claims to state court as discussed herein.

On November 23, 2009, Defendant removed this matter to federal district court. Dkt. 2. On March 25, 2010, Plaintiffs filed the instant motion. Dkt. 8. On April 12, 2010, Defendant responded. Dkt. 11. On April 16, 2010, Plaintiffs replied. Dkt. 12.


1 Plaintiffs move the Court, pursuant to Fed. R. Civ. P. 41(a), to grant the voluntary  
2 dismissal of their federal claims and to remand their remaining state law claims to state  
3 court. Dkt. 8. Defendant does not oppose this motion. Dkt. 11. However, Defendant  
4 requests that the dismissal be with prejudice and that Defendant be awarded attorney fees  
5 and costs related to the instant motion. *Id.* Because the parties agree that the federal  
6 claims should be dismissed, the Court grants Plaintiffs' motion to dismiss those claims.

7 Whether a motion for voluntary dismissal should be with or without prejudice is a  
8 matter committed to the Court's discretion. Fed. R. Civ. P. 41(a)(2). This case is yet in its  
9 early stages and no discovery has occurred. The City of Gig Harbor has failed to show  
10 that it will be unfairly prejudiced by an order of dismissal without prejudice or that the  
11 work performed by its attorneys cannot be useful in any future litigation. Therefore, the  
12 Court dismisses the federal claims without prejudice and declines Defendant's request for  
13 attorney fees and other costs.

14 Finally, the Court remands the remaining claims to state court. *See* 28 U.S.C. §  
15 1367(c)(3) (retaining supplemental jurisdiction over remaining state law claims is  
16 discretionary).

17 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to dismiss and remand  
18 (Dkt. 8) is **GRANTED** as discussed herein. The Court **DENIES** Defendant's request for  
19 attorney fees and costs.

20 DATED this 10th day of May, 2010.

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24 BENJAMIN H. SETTLE  
25 United States District Judge  
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