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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 THE UNITED STATES OF AMERICA,
7 for the Use and Benefit of FREELAND
8 INDUSTRIES, INC.,

9 Plaintiff,

10 v.

11 MURILLO MODULAR GROUP, LTD, a
12 Texas corporation, et al.,

13 Defendants.

CASE NO. C11-5649BHS

ORDER DENYING MOTION
TO SET ASIDE DISMISSAL

14 This matter comes before the Court on Plaintiff Freeland Industries, Inc.'s
15 ("Freeland") motion to set aside dismissal (Dkt. 13). The Court has reviewed the brief
16 filed in support of the motion and the remainder of the file and hereby denies the motion
17 for the reasons stated herein.


18 On August 19, 2011, Freeland filed a complaint against Defendants Murillo
19 Modular Group, Ltd., Fidelity and Deposit Company of Maryland, and Lexon Insurance
20 Co. for breach of contract, sums owing, and recovery under the Miller Act, 40 U.S.C. §§
21 3131-3134. Dkt. 1. On August 23, 2011, the Court ordered the parties to file a Joint
22 Status Report no later than December 21, 2011. Dkt. 3. On January 3, 2011, the Court
23 issued a notice to the parties that they "shall comply forthwith or may face dismissal."
24 On February, 7, 2012, the Court issued a Show Cause Order stating that the parties "have
25 until 2/24/2012 to file joint status report or case will be dismissed." Dkt. 12. On
26 February, 28, 2012, the case was dismissed.

1 On March 6, 2012, Freeland filed a motion to set aside the dismissal pursuant to
2 Fed. R. Civ. P. 60(b) and submitted a proposed joint status report. Dkt. 13.

3 The Court may set aside an order for “mistake, inadvertence, surprise, or excusable
4 neglect” or “any other reason that justifies relief.” Fed. R. Civ. P. 60(b). In this case,
5 Freeland has failed to show any inadvertence, surprise, or excusable neglect. With regard
6 to mistake, Freeland argues that it believed the Court’s show cause order set a date of
7 March 24, 2012 instead of February 24, 2012. This is not a mistake that justifies the
8 relief sought. With regard to any other reason, Freeland argues that the parties are
9 working together and Freeland has submitted a proposed joint status report. That
10 proposed report, however, does not contain any reference to a single position of any
11 named defendant and is not signed by any representative of any defendant. The Court
12 finds that there is no other reason to justify relief. Moreover, if the Court reopened the
13 matter, it appears that (1) each defendant would be subject to motions for default if they
14 were properly served and (2) defendants would suffer prejudice because at least some of
15 Freeland’s claims may be subject to the Miller Act’s statute of limitations.
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17 Therefore, it is hereby **ORDERED** that Freeland’s motion to set aside dismissal
18 (Dkt. 13) is **DENIED**.

19 DATED this 12th day of March, 2012.

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23 BENJAMIN H. SETTLE
24 United States District Judge
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