

ORDER
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1 The Plaintiffs in this action are four unhoused individuals, Lisa Hooper, Brandie
2 Osborne, Kayla Willis, and Reavy Washington (“Individual Plaintiffs”), and three
3 organizations, The Episcopal Diocese of Olympia, Trinity Parish of Seattle, and Real Change.
4 Plaintiffs are represented by the ACLU of Washington and other counsel. Plaintiffs’ amended
5 complaint alleges four causes of action against Defendants City of Seattle, Washington State
6 Department of Transportation (“WSDOT”), and Roger Millar, the Secretary of Transportation
7 for WSDOT. See Dkt. #87. Specifically, Plaintiffs allege that Defendants’ policy and practice
8 of seizing and destroying the property of people who are living outside (“sweeping” or
9 “sweeps”) violates their right to be secure from unreasonable seizures under the Fourth
10 Amendment to the U.S. Constitution; their right to privacy and protection from invasion of
11 their homes under Article I, Section 7 of the Washington State Constitution; and their right to
12 due process of law under both the Fourteenth Amendment to the U.S. Constitution and Article
13 I, Section 3 of the Washington State Constitution. *Id.*

16 The City of Seattle asserted a counterclaim for declaratory judgment in its Answer,
17 hoping that the Court would declare its sweep policies and practices lawful. Dkt. # 92. No
18 other Defendant has asserted a counterclaim.

20 On October 4, 2017, the Court denied Plaintiffs’ Motions for Class Certification and
21 Preliminary Injunction. Dkt. #209. Plaintiffs appealed to the Ninth Circuit and this Court
22 granted Plaintiffs’ Motion to stay proceedings pending the appeal. Dkt. #221.

24 On October 1, 2019, the ACLU, including some of the same attorneys representing
25 Plaintiffs in this case, filed a lawsuit against the City of Seattle in state court on behalf of three
26 other unhoused persons and a hair salon. Dkt. #231-1. Those plaintiffs assert a similar claim

27 While the term “homeless” is often utilized to refer to this population, Plaintiffs use the term
28 “unhoused” because people who lack permanent or stable housing still have homes in which
they sleep and go about their private affairs. *Id.*

1 under Article I, Section 7 of the Washington Constitution over the disposition of property at
2 encampments as well as state law claims for cruel punishment and conversion. *See id.* at 27-29.

3 In 2019 the Ninth Circuit affirmed this Court's denial of class certification and issued
4 its mandate on December 23, 2019. Dkt. #225.

5 On March 5, 2020, the City of Seattle filed a "Motion for Conversion of Preliminary
6 Injunction Ruling into Final Judgment on the Merits." Dkt. #230. The City argues that "[s]uch
7 a conversion is the functional equivalent of granting summary judgment "on the basis of the
8 factual record available at the preliminary injunction stage." *Id.* at 5. On March 12, Plaintiffs
9 moved for voluntary dismissal without prejudice. Dkt. #234. Plaintiffs' counsel state they
10 have been unable to contact some of their unhoused clients. *Id.* at 1 n.1. Both sides oppose
11 each other's motions and essentially present the Court with only these two options to proceed.
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13 While these Motions were awaiting their noting dates for consideration, Washington
14 State and indeed the entire world has had to respond to the COVID-19 pandemic. This
15 pandemic has apparently affected Plaintiffs' counsel's ability to communicate with their clients,
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17 see Dkt. #241 at 4-5.
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19 III. DISCUSSION

20 A. City of Seattle's Motion for Final Judgment on the Merits

21 A district court may convert its ruling on a preliminary injunction motion into a "final
22 adjudication on the merits . . . so long as the procedures do not result in prejudice to either
23 party." *Glacier Park Found'n v. Watt*, 663 F.2d 882, 886 (9th Cir. 1981) (citing Fed. R. Civ.
24 Pro. 65(a)(2)). However, "...it is generally inappropriate for a court to issue such a final
25 judgment on the merits of a claim at the preliminary injunction stage, because it is unlikely that
26 the merits of a claim will be fully ventilated at the early stage of a litigation at which a
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preliminary injunction is normally addressed.” *Arce v. Douglas*, 793 F.3d 968, 976 (9th Cir. 2015) (citing *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981)). The court should provide the parties with “clear and unambiguous notice [of the court's intent to consolidate the trial and the hearing] either before the hearing commences or at a time which will afford the parties a full opportunity to present their respective cases.” *Univ. of Texas v. Camenisch*, 451 U.S. at 395. A district court can also convert a decision on a preliminary injunction into a final disposition of the merits by granting summary judgment on the basis of the factual record available at the preliminary injunction stage. However, “a court could not properly enter summary judgment where the notice and hearing requirements of Fed. R. Civ. P. 56 have not been followed.” *Air Line Pilots Ass’n, Intern. v. Alaska Airlines, Inc.*, 898 F.2d 1393, 1397, n.4 (9th Cir. 1990).

Given the timing of this Motion well after the preliminary injunction hearing, Plaintiffs’ desire to withdraw from this case, the confusion created by the format of Defendants’ Motion, and the alleged inability of Plaintiffs’ counsel to reach certain Plaintiffs, the Court is not inclined to find that sufficient notice has been provided to all parties under rules 65 or 56. Defendants’ Motion seeks both to convert the preliminary injunction hearing into a final judgment on the merits and seeks summary judgment prior to the closing of discovery in this case. Even if notice were properly provided under rule 56, summary judgment would not be appropriate at this time because prior discovery was focused on the issues facing the parties at the preliminary injunction stage, and because new discovery would be necessary to cover the events of the last two years. Accordingly, the City of Seattle’s Motion will be denied. The Court notes that, even if there was a solid legal basis for entering a final judgment at the time

1 this Motion was initially brought, the ongoing COVID-19 pandemic would likely serve as a
2 basis for requiring further discovery.

3 **B. Motion for Voluntary Dismissal**

4 Rule 41(a)(2) provides, in pertinent part:

5 ...an action may be dismissed at the plaintiff's request only by
6 court order, on terms that the court considers proper. If a defendant
7 has pleaded a counterclaim before being served with the plaintiff's
8 motion to dismiss, the action may be dismissed over the
9 defendant's objection only if the counterclaim can remain pending
for independent adjudication. Unless the order states otherwise, a
dismissal under this paragraph (2) is without prejudice.

10 This rule "allows a plaintiff, pursuant to an order of the court, and subject to any terms and
11 conditions the court deems proper, to dismiss an action without prejudice at any time."
12 *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996) (citing *Stevedoring*
13 *Servs. of Am. v. Armilla Int'l B.V.*, 889 F.2d 919, 921 (9th Cir. 1989)). When ruling on a
14 motion to dismiss without prejudice, "the district court must determine whether the defendant
15 will suffer some plain legal prejudice as a result of the dismissal." *Id.* (citing *Hyde & Drath v.*
16 *Baker*, 24 F.3d 1162, 1169 (9th Cir. 1994); *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d
17 143, 145 (9th Cir. 1982)). Legal prejudice has been defined as "prejudice to some legal
18 interest, some legal claim, some legal argument.... [u]ncertainty because a dispute remains
19 unresolved is not legal prejudice." *Id.* at 97. "[T]he expense incurred in defending against a
20 lawsuit does not amount to legal prejudice." *Id.*

21 Plaintiffs argue that Defendants will not be prejudiced by voluntary dismissal merely
22 because this dispute remains unresolved or because Defendants may have to defend against
23 similar claims in the future, or concurrently in state court. Dkt. #234 at 3–5. Plaintiffs indicate
24 that a motion for voluntary dismissal can be granted over the objection of defendants even
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1 when a counterclaim is pending. *Id.* at 4 (citing *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir.
2 2001)). Plaintiffs advocate for concurrent dismissal of the City of Seattle’s counterclaim for
3 declaratory judgment, arguing that the counterclaim would amount to an advisory opinion in
4 the absence of a substantial controversy and require this Court to make decisions of state law
5 that are better adjudicated in state court. *Id.* at 6–11.

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7 As noted above, there is parallel litigation in state court asserting that the City’s sweeps
8 of encampments violates provisions of the Washington State Constitution. “[W]hen a state
9 court action is pending presenting the same issue of state law as is presented in a federal
10 declaratory suit, ‘there exists a presumption that the entire suit should be heard in state court.’”
11 *Cont’l Cas. Co. v. Robsac Indus.*, 947 F.2d 1367, 1370–71 (9th Cir. 1991), *overruled on other*
12 *grounds by Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d 1220 (9th Cir. 1998)). In determining
13 whether to exercise its jurisdiction under the Declaratory Judgment Act in these circumstances,
14 a Court should consider the following factors: (1) whether a refusal to entertain the request for
15 declaratory relief avoids needless decisions of state law by the federal court; (2) whether the
16 action is a means of forum shopping; and (3) whether dismissal of the claim for declaratory
17 relief would avoid duplicative litigation. *Smith*, 263 F.3d at 977 (cited source omitted).

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20 The City of Seattle argues legal prejudice from Plaintiffs’ apparent forum shopping,
21 delay in bringing this Motion, the risk of duplicative litigation, and “the public interest in final
22 resolution of such disputes and the distinct potential for foul play.” Dkt. #240 at 10–13. The
23 Washington State Department of Transportation and Roger Millar, Secretary of Transportation,
24 also argue that they face prejudice from voluntary dismissal, mainly in the form of having had
25 to devote “considerable resources to this case.” Dkt. #235 at 4.
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1 The Court finds that Defendants have failed to set forth some plain legal prejudice that
2 would result from this voluntary dismissal. The Court agrees with Plaintiffs that voluntary
3 dismissal now does not in any way alter the City of Seattle's legal interests of claims, and they
4 are free to continue removing encampments. See Dkt. #241 at 3. As noted above, uncertainty
5 because a dispute remains unresolved is not legal prejudice. The Court finds that there has not
6 been inordinate delay on Plaintiffs' part in bringing this Motion considering the time spent up
7 on appeal. As stated above, the expense incurred in defending against a lawsuit does not
8 constitute legal prejudice. The Court is concerned by the accusations of forum shopping, but
9 ultimately concludes that such has not been demonstrated in this case, in part because the state
10 court lawsuit has been brought by different plaintiffs and in part because the factual allegations
11 in that case will be separated by several years from those brought in this case. Accordingly,
12 voluntary dismissal is permitted.
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15 Dismissal of the City of Seattle's declaratory judgment counterclaim is also appropriate
16 as continuing with that claim alone would amount to an advisory opinion in the absence of a
17 substantial controversy and would require this Court to make decisions of state law that are
18 better adjudicated in the state court action.
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20 IV. CONCLUSION

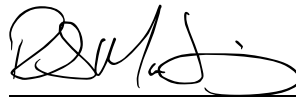
21 Having reviewed the above Motions, related briefing, and the remainder of the record,
22 the Court hereby finds and ORDERS:
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- 24 1. Defendant City of Seattle's Motion for Conversion of Preliminary Injunction Ruling
25 into Final Judgment on the Merits (Dkt. #230) is DENIED.
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1 2. Plaintiffs' Motion to Dismiss Plaintiffs' Claims and the City of Seattle's
2 Counterclaim (Dkt. #234) is GRANTED. Plaintiffs' claims and the City of Seattle's
3 counterclaim are DISMISSED without prejudice.

4 3. This case is CLOSED.

5 DATED this 11th day of June, 2020.
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10 RICARDO S. MARTINEZ
11 CHIEF UNITED STATES DISTRICT JUDGE
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