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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GREGG SCHUMACHER and LINDA)	
SCHUMACHER, individually and as)	No. CV-07-601-HU
husband and wife, and GREGG)	
SCHUMACHER FURS LLC dba)	MEMORANDUM IN SUPPORT OF
SCHUMACHER FURS & OUTERWEAR,)	MOTION TO DISMISS FOR LACK
)	OF PENDENT PARTY JURISDICTION
Plaintiffs)	ON BEHALF OF IN DEFENSE OF
)	ANIMALS, MATT ROSSELL, CONNIE
)	DURKEE, and KEVIN MEIRAS
v.)	
)	
CITY OF PORTLAND, a municipal)	

1 – MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PENDENT PARTY JURISDICTION ON BEHALF OF IN DEFENSE OF ANIMALS, MATT ROSSELL, CONNIE DURKEE, and KEVIN MEIRAS

corporation; IN DEFENSE OF ANIMALS,)
a foreign nonprofit corporation; ANIMAL)
LIBERATION FRONT, an unincorporated)
association; PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC., a)
foreign nonprofit corporation; MATT)
ROSSELL; KEVIN MEIRAS aka “Bluejay”;))
CONNIE DURKEE; ALEX LILLI; JOHN)
DOES 1-10; and JANE DOES 1-10)

Defendants.)
)
)

In Defense of Animals, Matt Rossell, Connie Durkee, and Kevin Meiras (“IDA, Rossell, Durkee, and Meiras”) submit this Memorandum in support of defendants’ motion to dismiss plaintiffs’ complaint as this court lacks supplemental jurisdiction over pendent party defendants. Plaintiffs’ claims against IDA, Rossell, Durkee, and Meiras are state claims only, which do not arise out of a common nucleus of operative fact in relation to plaintiffs’ federal claims against the City of Portland, and contain different evidentiary issues, and remedies.

A. Plaintiffs’ Complaint Against Defendants IDA, Rossell, Durkee, and Meiras Should be Dismissed as this Court Lacks Original Subject Matter Jurisdiction Over the Claims Against the Pendent Party Defendants.

Plaintiffs have asserted federal causes of action under 42 U.S.C. § 1983 against the City of Portland. As to these claims, this court has original subject matter jurisdiction. Therefore, the court may assert supplemental jurisdiction over the plaintiffs’ state law claims only if those claims form part of the same case or controversy as the plaintiffs’ § 1983 causes of action.

Subject to specific statutory exceptions, a federal district court with original subject matter jurisdiction over a claim has the power to exercise supplemental jurisdiction over state claims that are “so related” that they form part of the “same case or controversy under Article III of the United States Constitution,” including claims that involve joinder of additional parties. 28 U.S.C. § 1367(a). As a result, pendent party jurisdiction is constitutional so long as the state law 2 – MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PENDENT PARTY JURISDICTION ON BEHALF OF IN DEFENSE OF ANIMALS, MATT ROSSELL, CONNIE DURKEE, and KEVIN MEIRAS

claims are part of the same case or controversy as a federal question claim properly before the court. *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1173 (9th Cir. 2002); *Ortmayer v. Union Bank*, No. 04-1580-HU, 2005 WL 433703 (D. Or. Feb. 24, 3005).

State claims are part of the same case or controversy as federal claims when they “derive from a common nucleus of operative fact” such that a plaintiff “would ordinarily be expected to try them in one judicial proceeding.” *Finley v. United States*, 490 U.S. 545, 549 (1989). Thus, a common nucleus of operative fact exists where the federal and state cause of action address an identical harm. *See Trustees of the Construction Industry and Laborers Health and Welfare Trust v. Desert Valley Landscape and Maintenance*, 333 F. 3d 923, 925 (9th Cir. 2003)(common nucleus of operative fact where debt plaintiffs’ sought to recover under a state claim was the same debt sought under a federal claim). However, if the federal and state claims involve different allegations that arose from different events, then they do not share a common nucleus of operative fact. *Hudson v. Yuba County Sheriff’s Department*, No. 06-906-DFL-GGH, 2007 WL 471004 (E.D. Cal. Feb. 9, 2007).

In *Hudson*, for example, the plaintiff alleged federal causes of action arising out of incidents of police misconduct on a specific date along with state causes of action alleging his neighbor and the police department engaged in ongoing harassment. *Id.* Because it could find no common nucleus of operative fact, the court held it could not exercise supplemental jurisdiction over the state claims against the neighbor. *Id.*

Here, like the plaintiff in *Hudson*, the plaintiffs’ alleged federal causes of action against the City of Portland involve different allegations that arise from different events than the state claims plaintiffs asserted against defendants. Specifically, the plaintiffs’ federal claims arise from the City of Portland’s alleged failure to take action to enforce the law against unidentified protestors on unidentified dates. Complaint p. 5:18-19; 6:20. The claims against Rossel, Durkee, Meiras and IDA, on the other hand, entail allegations that they committed several common law torts on unspecified dates. Complaint pp. 8-13. Therefore, because the federal and state claims here involve different allegations based on different events, they do not share a common nucleus of operative fact. As a result, the court must decline supplemental jurisdiction. *See* 28 U.S.C. § 1367(a).

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B. Even if the Plaintiffs' State Claims Are Part of the Same Case or Controversy as the Federal 42 U.S.C. § 1983 Claims, the Court Should Exercise Its Discretion to Decline Supplemental Jurisdiction

Under 28 U.S.C. § 1367(c), the court may, in its discretion, decline to exercise

supplemental jurisdiction if (1) the claim raises a novel or complex issue of state law, (2) the claim substantially predominates over the claim over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c).

Section 1367(c)(2) gives the district court discretion to dismiss a supplemental state claim if the state claim predominates over the federal claims in the case. The rule codifies *United Mine Workers v. Gibbs*, in which the Supreme Court stated that if the pendent state issues substantially predominate in terms of 1) proof, 2) the scope of the issues raised, or 3) the comprehensiveness of the remedy sought, the federal court may dismiss the state claims. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726-27 (1966); *Executive Software, 24 F.3d 1545, 1554* (1994). Specifically, courts look to whether the state claim involves a substantial quantity of evidence not relevant to the federal claim and the difficulty of avoiding duplicative recoveries in federal and state court. 16 *Moore's Federal Practice - Civil* § 106.65 (Daniel R. Coquillette et al. eds, 2007).

For example, in *Patel v. Penman*, the Ninth Circuit upheld the district court's dismissal of the plaintiffs' state law claims because the state and federal claims involved different evidence and raised different issues. *103 F.3d 868, 877 (9th Cir. 1996)*. The court had original jurisdiction over a *Monell*¹ claim alleging the city violated procedural due process when it closed the plaintiff's hotel while the supplemental state claim asserted inverse condemnation under the state constitution. *Id.* The Ninth Circuit reasoned the "alleged violation of post-closure

¹ *Monell* claims require that the plaintiffs prove the city committed a constitutional violation and that the violation occurred pursuant to a city policy or custom. *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

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procedural due process would be a slender federal reed on which to base jurisdiction over a state-law claim as substantial as inverse condemnation.” *Id.*

Similarly, in *Ortmayer*, the district court declined supplemental jurisdiction where the number of state claims significantly outweighed the number of federal claims in the case. 2003 WL 4333703, at *6. While the plaintiff asserted a total of seven claims, he made only one federal claim against one of five defendants. *Id.* In addition, the complaint focused primarily on the state claims. *Id.*

Here, as in *Patel*, the plaintiffs’ state claims require substantially different proof and involve different legal theories than the federal claims. The plaintiffs’ state law claims against the pendent parties are common law torts arising out of the alleged conduct of animal rights activists. The plaintiffs’ federal causes of action, on the other hand, are *Monell* claims against the City of Portland, which require that the plaintiffs prove the city committed a constitutional violation and that the violation occurred pursuant to a city policy or custom. *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

Moreover, here, like the situation in *Ortmayer*, the scope of the state claims in relation to the federal claims also weighs against supplemental jurisdiction. Plaintiffs’ federal claims involve one defendant and their state law claims involve eight named defendants and twenty unnamed defendants (John and Jane Does). Duplicative remedies do not pose a problem here because the federal claims do not apply to the pendent parties. Thus, the court should decline supplemental jurisdiction under § 1367(c)(2).

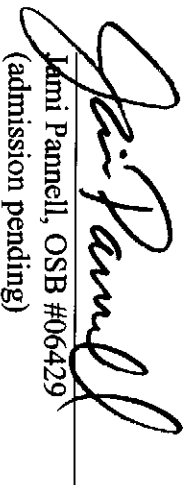
Another indication that the state laws predominate in this case is the fact that this court is being asked to expedite a motion for a preliminary injunction against the pendent parties based entirely upon state law claims.

A court does not raise § 1367(c) *sua sponte* as a jurisdictional defect. See *Acri v. Varian Associates*. 114 F.3d 999, 1000 (9th Cir. 1997)(holding the court is not required to make a § 1367(c) analysis unless asked to do so by a party). Rather, once a party challenges supplemental jurisdiction, the court first determines whether one of § 1367(c) scenarios applies and then looks to the values of “economy, convenience, fairness and comity” to influence its exercise of discretion to decline jurisdiction. *Executive Software*, 24 F.3d at 1557. A court applying these

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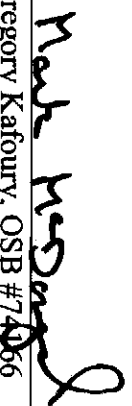
values may decline jurisdiction where a case is young and the outcome of the state claims is not plain. *Blume v. Myers*, No. CV-99-1423-HU, 2000 WL 210606 (D. Or. Feb. 22, 2000). Here, like the case dismissed by the federal court in *Blume*, this case is at the early stages. Therefore, a court's decision to decline supplemental jurisdiction under § 1367(c) would be a proper exercise of its discretion in this case.

RESPECTFULLY SUBMITTED this 11th day of May, 2007.



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CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Memorandum in Support of Motion to Dismiss for lack of Jurisdiction on the following person(s) on the date indicated below, by the following method:

[X] by electronically mailed notice from the court on the date set forth below;

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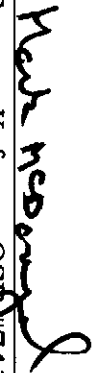
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