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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Ann T. Palmer,  
10 Plaintiff/Counterdefendant,

No. CV-14-02414-PHX-SMM

**ORDER**

11 v.

12 Todd H. Franks, *et al.*,  
13 Defendants/Counterclaimants  
14

15 Pending before the Court are Plaintiff Ann Palmer's ("Palmer") Motion and  
16 Memorandum of Law in Support of Plaintiff/Counterclaimant's Rule 12(b)(1) Motion to  
17 Dismiss and rule (12(e) Motion for a More Definite Statement and Defendants' Todd  
18 Franks, Nancy L.R. Bodinet, and Franks, Houser & McVey, P.C. ("Defendants")  
19 Opposition to Plaintiff's Counterdefendant's Rule 12(b)(1) Motion to Dismiss and  
20 Motion for more Definite Statement and Cross-Motion to Remand. (Docs. 16; 24.) The  
21 parties have responded and the motions are fully briefed. (Docs. 25; 28.) Having  
22 reviewed the parties' briefing, the Court will grant Palmer's motion in part and dismiss  
23 Defendants' counterclaims.

24 **BACKGROUND**

25 Palmer, Defendant's former employee, originally brought a complaint in Arizona  
26 state court against Defendants under the Fair Labor Standards Act (FLSA). Defendants  
27 removed the action to this Court and, after a failed mediation, filed an answer alleging a  
28 number of state law counterclaims, including: breach of contract, trespass, conversion,

1 misappropriation, violation of the Arizona Uniform Trade Secrets Act, spoliation,  
2 vandalism, and breach of the duty of loyalty. (Docs. 1; 12.) The parties subsequently  
3 settled the original FLSA claim. The counterclaims remain in dispute.

#### 4 **STANDARD OF REVIEW**

5 Under 28 U.S.C.A. § 1367(a), “district courts have supplemental jurisdiction over  
6 all other claims that are so related to claims in the action within such original jurisdiction  
7 that they form part of the same case or controversy under Article III of the United States  
8 Constitution.” Nonetheless, “district courts may decline to exercise supplemental  
9 jurisdiction over a claim under subsection (a) if... the district court has dismissed all  
10 claims over which it has original jurisdiction.” 28 U.S.C.A. § 1367(d). The Ninth Circuit  
11 has not ruled on whether the nexus between an FLSA unpaid overtime claim and state  
12 law counterclaims is sufficient to find a “common nucleus of operative fact,” as is  
13 required under 1367(a). United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).  
14 However, other circuits addressing this issue found that a prior employment relationship  
15 is insufficient to support supplemental jurisdiction over state law counterclaims brought  
16 in FLSA cases. See Lyon v. Whisman, 45 F.3d 758, 763 (3d Cir. 1995) (employment link  
17 insufficient to trigger supplemental jurisdiction over state law claims that have nothing to  
18 do with unpaid overtime); Wilhelm v. TLC Lawn Care, Inc., No. CIV.A. 07-2465-KHV,  
19 2008 WL 640733 (D. Kan. Mar. 6, 2008) (no common nucleus of operative fact between  
20 FLSA unpaid overtime claim and state law tort counterclaims).

#### 21 **DISCUSSION**

22 Palmer argues that the counterclaims should be dismissed under alternative  
23 theories: (1) lack of nexus between the dismissed FLSA claim and Defendant’s  
24 counterclaims; and (2) the Court’s authority is discretionary. (Doc. 16 at 2.) Defendants,  
25 regardless of the supplemental jurisdiction question, argue that dismissal would be  
26 inappropriate and that the counterclaims should instead be remanded to state court  
27 because this district, among others, have done so in similar circumstances.

1 The Court finds an insufficient nexus between Palmer’s original FLSA claim and  
2 Franks’ state law counterclaims and therefore will dismiss the remaining counterclaims.  
3 As described above, the employment link, standing alone, is insufficient to trigger  
4 supplemental jurisdiction over state law claims that are unrelated to the underlying FLSA  
5 claim. See Lyon v. Whisman, 45 F.3d 758, 763 (3d Cir. 1995); Wilhelm v. TLC Lawn  
6 Care, Inc., No. CIV.A. 07-2465-KHV, 2008 WL 640733 (D. Kan. Mar. 6, 2008). The  
7 eight filed counterclaims simply do not share the requisite “common nucleus of operative  
8 fact” with the original unpaid overtime claim. Gibbs, 383 U.S. at 725.

9 Moreover, even if the Court found that grounds for supplemental jurisdiction  
10 existed, denial would still be proper. See 28 U.S.C.A. § 1367(c) (supplemental  
11 jurisdiction is discretionary when the court dismisses all claims over which it had original  
12 jurisdiction); see also Gibbs, 383 U.S. at 726 (instructing that state law claims should be  
13 dismissed if federal claims are dismissed before trial). The Court therefore declines to  
14 exercise supplemental jurisdiction over Defendant’s counterclaims and will dismiss the  
15 action.

### 16 Conclusion

17 In light of the Court’s findings, judgment in favor of Palmer is proper.  
18 Accordingly,

19 **IT IS HEREBY ORDERED granting in part** Palmer’s Motion to Dismiss  
20 Defendant’s/Counterclaimants’ Counterclaims and for a More Definite Statement. (Doc.  
21 16.) The counterclaims are dismissed without prejudice.

22 **IT IS FURTHER ORDERED denying in part** Palmer’s Motion to Dismiss  
23 Defendant’s/Counterclaimants’ Counterclaims and for a More Definite Statement. (Doc.  
24 16.) Defendants need not file a more definite statement as that issue is now moot.

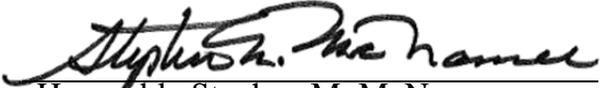
25 **IT IS FURTHER ORDERED denying** Defendants’ Motion in Opposition. (Doc.  
26 24.) The counterclaims will not be remanded to state court. Defendants may refile the  
27 counterclaims in state court. Time will be tolled for six months pursuant to 28 U.S.C.A. §

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1376(d) and A.R.S. § 12-504(A).

Dated this 22nd day of September, 2015.

  
Honorable Stephen M. McNamee  
Senior United States District Judge