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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Gaetano N. Sacco,

10 Plaintiff,

11 v.

12 APS Electric Company, et al.,

13 Defendants.  
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No. CV-20-01306-PHX-DWL

**ORDER**

15 In his complaint in this action, *pro se* Plaintiff Gaetano N Sacco (“Plaintiff”) asserts  
16 claims against two defendants: the City of Phoenix (“the City”) and Arizona Public Service  
17 Company (“APS”) (together, “Defendants”). (Doc. 1 ¶¶ 6-7.) The first claim, which is  
18 asserted only against the City, is a federal claim under 42 U.S.C. § 1983 for deprivation of  
19 civil rights. (*Id.* ¶¶ 17-24.) The remaining four claims, which are asserted against both  
20 Defendants, are state-law claims. (*Id.* ¶¶ 25-51.) It appears that all five claims arise from  
21 the same common nucleus of operative fact—specifically, alleged efforts by Defendants to  
22 shut off the power at Plaintiff’s property. (*Id.* ¶¶ 1, 8-14.) The complaint alleges that the  
23 Court has “[s]upplemental jurisdiction over Plaintiffs’ state law claims . . . pursuant to 28  
24 U.S.C. § 1367.” (*Id.* ¶ 3.)

25 Now pending before the Court is APS’s motion to dismiss pursuant to Rule 12(b)(1)  
26 of the Federal Rules of Civil Procedure. (Doc. 10.) APS asserts that the claims against it  
27 “must be dismissed” for lack of subject-matter jurisdiction because Plaintiff’s sole federal  
28 claim is asserted against the City. (*Id.*)

1           Although APS’s motion is not yet fully briefed, the Court will deny it without  
2 requiring *pro se* Plaintiff to file a response. APS cites no case law for the proposition that  
3 the Court cannot exercise supplemental jurisdiction over state-law claims asserted against  
4 one defendant where the only federal claims in the case are asserted against a co-defendant.  
5 The only legal authority identified in APS’s motion for this proposition is 28 U.S.C. §  
6 1367, but subdivision (a) of the statute specifically recognizes that “supplemental  
7 jurisdiction shall include claims that involve the joinder . . . of additional parties.” As the  
8 Ninth Circuit has recognized, “[s]upplemental jurisdiction is constitutional so long as the  
9 pendent state law claim is part of the same ‘case or controversy’ as the federal claim.  
10 Nonfederal claims are part of the same ‘case’ as federal claims when they derive from a  
11 common nucleus of operative fact and are such that a plaintiff would ordinarily be expected  
12 to try them in one judicial proceeding.” *Trustees of Construction Industry & Laborers*  
13 *Health & Welfare Trust v. Desert Valley Landscape & Maintenance, Inc.*, 333 F.3d 923,  
14 925 (9th Cir. 2003) (citations and internal quotation marks omitted). Thus, so long as the  
15 state-law claims against one defendant “constitute part of the same constitutional case as  
16 the federal . . . claims against” a co-defendant, “the district court has the power to exercise  
17 supplemental jurisdiction.” *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1174 (9th Cir.  
18 2002).

19           Here, APS doesn’t argue that Plaintiff’s state-law claims against it somehow arise  
20 from a different nucleus of operative fact than Plaintiff’s § 1983 claim against the City.  
21 Nor does APS argue that the Court should decline to exercise supplemental jurisdiction  
22 over Plaintiff’s state-law claims as a matter of discretion. Instead, APS’s sole dismissal  
23 argument is that federal courts categorically lack subject-matter jurisdiction over state-law  
24 claims asserted against one defendant when the only federal claim in the case is asserted  
25 against a co-defendant. That argument is simply not accurate. Thus, although the  
26 jurisdictional analysis may change in the future, depending on the resolution of Plaintiff’s  
27 § 1983 claim against the City,<sup>1</sup> APS is not presently entitled to dismissal based on the

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28 <sup>1</sup> If that claim were dismissed, the Court might very well decline to exercise supplemental jurisdiction over the remaining state-law claims at that juncture. *See, e.g.*,

1 grounds identified in its motion.

2 Accordingly,

3 **IT IS ORDERED** that APS's motion to dismiss (Doc. 10) is denied without  
4 prejudice.

5 Dated this 17th day of November, 2020.

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Dominic W. Lanza  
United States District Judge

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*Shooter v. Arizona*, 2019 WL 2410808, \*7-8 (D. Ariz. 2019).