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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA
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ERIC BATES, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	Case No. 1:14-cv-02085-LJO-SAB (ECF Nos. 40, 47, 48)
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MARLON ALTAMIRANO, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	Case No. 1:15-cv-00607-LJO-SAB (ECF Nos. 42, 49, 50)
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ANDREW ALANIZ, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	Case No. 1:15-cv-01063-LJO-SAB (ECF Nos. 36, 43, 44)
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JOSE APARICIO, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.	Case No. 1:15-cv-01369-LJO-SAB (ECF Nos. 28, 35, 36)
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1 DEREK BIRGE, et al.,
2 Plaintiffs,
3 v.
4 ARNOLD SCHWARZENEGGER, et al.,
5 Defendants.

Case No. 1:15-cv-01901-LJO-SAB
FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING
DEFENDANTS' MOTION TO DISMISS
(ECF Nos. 26, 32, 33)
OBJECTIONS DUE WITHIN FOURTEEN
DAYS

7 Currently before the Court are Defendants' motion to dismiss the above referenced
8 actions on the grounds of qualified immunity.

9 **I.**

10 **PROCEDURAL HISTORY**

11 On December 29, 2014, forty-five plaintiffs filed Bates v. Schwarzenegger, no. 1:14-cv-
12 02085-LJO-SAB (E.D. Cal.) against defendants Arnold Schwarzenegger, Jeffrey Beard, Paul
13 Brazelton, James Hartley, Susan Hubbard, Deborah Hysen, Felix Igbiosa, Scott Kernan, Chris
14 Meyer, Tanya Rothchild, Teresa Schwartz, Dwight Winslow, Carl Wofford, James Yates, and
15 James Tilton.¹ The matter was stayed from January 22, 2015 until September 16, 2015. On
16 November 14, 2015, the plaintiffs filed a first amended complaint. Subsequently, the matter was
17 stayed pending the resolution of the appeals in the related cases of Smith, et al. v.
18 Schwarzenegger, et al., appeal no. 15-17155, Hines v. Youssef, appeal no. 15-16145, and
19 Jackson, et al. v. Brown, et al., appeal no. 15-17076. (ECF No. 51.) On February 1, 2019, the
20 Ninth Circuit issued an order affirming the district court decision in Smith, et al. v.
21 Schwarzenegger, et al., appeal no. 15-17155, and Hines v. Youssef, appeal no. 15-16145, and
22 affirming in part and reversing in part in Jackson, et al. v. Brown, et al., appeal no. 15-17076.
23 The stay of this matter was lifted on April 5, 2019. On April 26, 2019, the named defendants
24 filed a motion to dismiss. The plaintiffs filed an opposition on July 3, 2019. The defendants
25 filed a reply on July 17, 2019.

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28 ¹ All these actions have also been filed against Clark Kelso and Robert Sillen, receivers for the CDCR, but these
defendants have been dismissed from the actions.

1 On April 17, 2015, fifty six plaintiffs filed Altamirano v. Schwarzenegger, no. 1:15-cv-
2 00607-LJO-SAB against defendants Arnold Schwarzenegger, Jeffrey Beard, Paul Brazelton,
3 Matthew Cate, Scott Frauenheim, James Hartley, Susan Hubbard, Deborah Hysen, Felix
4 Igbinsosa, Scott Kernan, Chris Meyer, Tanya Rothchild, Teresa Schwartz, Dwight Winslow, Carl
5 Wofford, James A. Yates, and James Tilton. A first amended complaint was filed on November
6 14, 2015. On February 19, 2016, the matter was stayed pending resolution of the appeals in
7 Smith, Hines, and Jackson. On April 5, 2019, an order issued lifting the stay. The named
8 defendants file a motion to dismiss on April 26, 2019. The plaintiffs filed an opposition on July
9 3, 2019. The defendants filed a reply on July 17, 2019.

10 On July 9, 2015, seventeen plaintiffs filed Alaniz v. Schwarzenegger, no. 1:15-cv-01063-
11 LJO-SAB (E.D. Cal.) against defendants Arnold Schwarzenegger, Jeffrey Beard, Paul Brazelton,
12 Matthew Cate, Scott Frauenheim, James Hartley, Susan Hubbard, Deborah Hysen, Felix
13 Igbinsosa, Scott Kernan, Chris Meyer, Tanya Rothchild, Teresa Schwartz, Dwight Winslow, Carl
14 Wofford, James A. Yates, and James Tilton. On February 18, 2016, the matter was stayed
15 pending resolution of the the appeals in Smith, Hines, and Jackson. On April 5, 2019, an order
16 issued lifting the stay. The named defendants file a motion to dismiss on April 26, 2019. The
17 plaintiffs filed an opposition on July 3, 2019. The defendants filed a reply on July 17, 2019.

18 On September 5, 2015, thirteen plaintiffs filed Aparicio v. Schwarzenegger, no. 1:15-cv-
19 01369-LJO-SAB (E.D. Cal.) against defendants Arnold Schwarzenegger, Jeffrey Beard, Paul
20 Brazelton, Matthew Cate, Scott Frauenheim, James Hartley, Susan Hubbard, Deborah Hysen,
21 Felix Igbinsosa, Scott Kernan, Chris Meyer, Tanya Rothchild, Teresa Schwartz, Dwight Winslow,
22 Carl Wofford, James A. Yates, and James Tilton. On February 19, 2016, the matter was stayed
23 pending resolution of the the appeals in Smith, Hines, and Jackson. On April 5, 2019, an order
24 issued lifting the stay. The named defendants file a motion to dismiss on April 26, 2019. The
25 plaintiffs filed an opposition on July 3, 2019. The defendants filed a reply on July 17, 2019.

26 On December 19, 2015, fourteen plaintiffs filed Birge v. Schwarzenegger, no. 1:15-cv-
27 01901-LJO-SAB (E.D. Cal.) against defendants Arnold Schwarzenegger, Jeffrey Beard, Paul
28 Brazelton, Matthew Cate, Scott Frauenheim, James Hartley, Susan Hubbard, Deborah Hysen,

1 Felix Igbinosa, Scott Kernan, Chris Meyer, Tanya Rothchild, Teresa Schwartz, Dwight Winslow,
2 Carl Wofford, James A. Yates, and James Tilton. On May 19, 2016, the matter was stayed
3 pending resolution of the the appeals in Smith, Hines, and Jackson. On April 5, 2019, an order
4 issued lifting the stay. The named defendants filed a motion to dismiss on April 26, 2019. The
5 plaintiffs filed an opposition on July 3, 2019. The defendants filed a reply on July 17, 2019.

6 On July 29, 2019, the hearing on the motions to dismiss were vacated and the matters
7 were taken under submission.

8 **II.**

9 **COMPLAINT ALLEGATIONS**

10 All plaintiffs in these actions are current or former inmates in the custody of the
11 California Department of Corrections (“CDCR”) and were housed at prisons which are located in
12 the Central Valley of California.² Arnold Schwarzenegger and Edmond Brown, Jr. are former
13 Governors of the State of California. The remaining defendants are current or former prison
14 officials.

15 The plaintiffs bring this action alleging that the state and prison officials were
16 deliberately indifferent to their risk of contracting Valley Fever and developing disseminated
17 disease. Coccidioidomycosis (“Valley Fever”) is a parasitic disease caused by inhaling fungal
18 spores that are located in soils in certain areas of the United States, including California. Valley
19 Fever spores are prevalent in the Central Valley of California.

20 Once an individual contracts Valley Fever it can progress to a disseminated form
21 (“disseminated Valley Fever”) which can affect the organs of the body and may result in death.
22 There is no cure for disseminated Valley Fever and the infected individual must take antifungal
23 drugs for the remainder of their life. Patients with disseminated Valley Fever may be expected
24 to have debilitating relapses during their lifetime.

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27 ² Other than the information regarding the plaintiffs and some minor differences in the named defendants based on
28 where the specific inmates were housed, all the complaints are substantially identical. Similarly, the motions to
dismiss, oppositions, and replies are identical in each action. Accordingly, the Court considers the complaints,
moving and opposition papers in one order.

1 Plaintiffs contend that the named defendants were aware of the prevalence of Valley
2 Fever and located Avenal State Prison (“ASP”), Wasco State Prison (“WSP”), California
3 Correctional Institution (“CCI”), California State Prison-Corcoran, Pleasant Valley State Prison
4 (“PVSP”), California Substance Abuse Treatment Facility, and Kern Valley State Prison
5 (“KVSP”) in the hyper-endemic region of the Central Valley. Plaintiffs state that ASP and PVSP
6 contain an acutely amplified risk of Valley Fever and were known by 2006 to be extraordinarily
7 dangerous. Due to this epidemic of Valley Fever in which infection rates were increasing in the
8 prisons, in 2007, CDCR implemented an ineffective policy that protected persons with certain
9 medical conditions but did not protect other inmates who defendants knew were at risk and did
10 not stem the epidemic of Valley Fever.

11 Plaintiffs also allege that it is commonly and widely known that certain groups are more
12 susceptible than others to developing disseminated Valley Fever. It has long been acknowledged
13 in scientific literature that African-Americans and Filipinos are exceptionally susceptible. In
14 addition to those higher risk racial and ethnic groups (African-Americans, Filipinos and other
15 Asians, Hispanics, and American Indians), individuals with compromised or suppressed immune
16 systems are also at an increased risk of developing disseminated Valley Fever. The incident
17 rates of Valley Fever at PVSP, ASP, and WSP are much higher than the incident rates in Kern
18 County and over thirty inmates have died from Valley Fever.

19 Generally, the plaintiffs allege that each of the named defendants were aware of the
20 elevated risk of inmates in the hyper-endemic areas of contracting Valley Fever and that failure
21 to control inmate exposure to the soil in the areas increased the risk. Despite this knowledge,
22 construction projects were authorized and new dormitories were built at PVSP and no efforts
23 were taken to remediate the inmates’ exposure to Valley Fever spores.

24 Most plaintiffs allege that they have risk factors that placed them at an increased risk of
25 developing disseminated Valley Fever and contracted Valley Fever while housed at PVSP or
26 ASP.³ Plaintiffs continue to suffer from the effects of the disease. Plaintiffs allege that the

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28 ³ Plaintiff Campbell contracted Valley Fever while housed at the Central Valley Modified Community Correctional Facility and was later transferred to KVSP where he was diagnosed with Valley Fever. Plaintiff Chaney contracted

1 named defendants were deliberately indifferent to their risk of contracting Valley Fever by
2 housing them where they were exposed to Valley Fever.

3 **III.**

4 **MOTION TO DISMISS LEGAL STANDARD**

5 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss on
6 the grounds that a complaint “fail[s] to state a claim upon which relief can be granted.” A
7 motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. Navarro
8 v. Block, 250 F.3d 729, 732 (9th Cir. 2001). In deciding a motion to dismiss, “[a]ll allegations
9 of material fact are taken as true and construed in the light most favorable to the nonmoving
10 party.” Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996). The pleading
11 standard under Rule 8 of the Federal Rules of Civil Procedure does not require “ ‘detailed factual
12 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully harmed-me
13 accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v.
14 Twombly, 550 U.S. 544, 555 (2007)). In assessing the sufficiency of a complaint, all well-
15 pleaded factual allegations must be accepted as true. Iqbal, 556 U.S. at 678-79. However,
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
17 statements, do not suffice.” Id. at 678. To avoid a dismissal under Rule 12(b)(6), a complaint
18 must plead “enough facts to state a claim to relief that is plausible on its face.” Twombly, 550
19 U.S. at 570.

20 In deciding whether a complaint states a claim, the Ninth Circuit has found that two
21 principles apply. First, to be entitled to the presumption of truth the allegations in the complaint
22 “may not simply recite the elements of a cause of action, but must contain sufficient allegations
23 of underlying facts to give fair notice and to enable the opposing party to defend itself
24 effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Second, so that it is not unfair
25 to require the defendant to be subjected to the expenses associated with discovery and continued
26 litigation, the factual allegations of the complaint, which are taken as true, must plausibly

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Valley Fever at Corcoran State Prison. Plaintiff Gamboa contracted Valley Fever at CCI. Plaintiff Masushige
contracted Valley Fever at WSP.

1 suggest an entitlement to relief. Starr, 652 F.3d at 1216. “Dismissal is proper only where there
2 is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable
3 legal theory.” Navarro, 250 F.3d at 732 (citing Balistreri v. Pacifica Police Dept., 901 F.2d 696,
4 699 (9th Cir.1988)).

5 IV.

6 ANALYSIS AND DISCUSSION

7 Defendants move to dismiss this action based upon the Ninth Circuit’s recent holding in
8 Hines v. Youseff, 914 F.3d 1218 (9th Cir. 2019). Defendants contend that Hines is controlling
9 and they are entitled to qualified immunity for housing inmates in prisons in which they were
10 exposed to Valley Fever. Defendants further request that the Court decline to exercise
11 supplemental jurisdiction over the state law claims and that the actions be dismissed without
12 leave to amend.

13 Plaintiffs concede that the motion to dismiss must be granted but state that other
14 arguments could be addressed should the Court choose to do so. Plaintiffs argue that the Ninth
15 Circuit was wrong to assert that exposure to Valley Fever is a risk that society is willing to
16 accept. Plaintiffs further argue that this Court has previously defined the right at the incorrect
17 level of generality in addressing the issue of qualified immunity, and that the receiver did not
18 have authority to compel CDCR to adopt a particular protocol to prevent contraction of Valley
19 Fever.

20 Defendants reply that the plaintiffs have conceded that the motion to dismiss must be
21 granted based on qualified immunity under the controlling decision in Hines. Defendants argue
22 that the Ninth Circuit has conclusively addressed the arguments raised in the objection and has
23 determined that “the right to be free from heightened exposure to Valley Fever spores” is not
24 clearly established citing Hines, 914 F.3d at 1229-31.

25 A. Qualified Immunity

26 The doctrine of qualified immunity protects government officials from civil liability
27 where “their conduct does not violate clearly established statutory or constitutional rights of
28 which a reasonable person would have known.” Pearson v. Callahan, 555 U.S. 223, 231 (2009)

1 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). “ ‘Qualified immunity gives
2 government officials breathing room to make reasonable but mistaken judgments,’ and ‘protects
3 all but the plainly incompetent or those who knowingly violate the law.’ ” Stanton v. Sims, 134
4 S.Ct. 3, 5 (2013) (citations omitted).

5 To determine if an official is entitled to qualified immunity the court uses a two part
6 inquiry. Saucier v. Katz, 533 U.S. 194, 200 (2001). The court determines if the facts as alleged
7 state a violation of a constitutional right and if the right is clearly established so that a reasonable
8 official would have known that his conduct was unlawful. Saucier, 533 U.S. at 200. A district
9 court is “permitted to exercise their sound discretion in deciding which of the two prongs of the
10 qualified immunity analysis should be addressed first in light of the circumstances in the
11 particular case at hand.” Pearson, 555 U.S. at 236. The inquiry as to whether the right was
12 clearly established is “solely a question of law for the judge.” Dunn v. Castro, 621 F.3d 1196,
13 1199 (9th Cir. 2010) (quoting Tortu v. Las Vegas Metro. Police Dep’t, 556 F.3d 1075, 1085 (9th
14 Cir. 2009)).

15 It is not required that there be a case directly on point before concluding that the law is
16 clearly established, “but existing precedent must have placed the statutory or constitutional
17 question beyond debate.” Stanton, 134 S.Ct. at 5 (quoting Ashcroft v. al-Kidd, 131 S.Ct. 2074,
18 2085 (2011)). A right is clearly established where it is “sufficiently clear that every reasonable
19 official would [have understood] that what he is doing violates that right.” Hines, 914 F.3d at
20 1229 (quoting Reichle v. Howards, 566 U.S. 658, 664 (2012)).

21 In determining if the right is clearly established, the court must consider the law, “in light
22 of the specific context of the case, not as a broad general proposition.” Hines, 914 F.3d at 1229
23 (Mullenix v. Luna, 136 S.Ct. 305, 308 (2015)). Plaintiffs argue that this court has previously
24 defined the question as to whether the law was clearly established too specifically. But the
25 question to be addressed is whether, in light of precedent existing at the time, the defendants
26 would be aware that housing inmates in an area where they were exposed to heightened exposure
27 to Valley Fever spores would violate their constitutional rights. As Plaintiffs concede, this
28 question has been answered by the Ninth Circuit in Hines.

1 In Hines, the Ninth Circuit did not consider whether exposing inmates to heightened
2 exposure of Valley Fever spores violated the Eighth Amendment’s prohibition against cruel and
3 unusual punishment, but addressed whether the law was clearly established at the time the
4 defendants acted. Hines, 914 F.3d at 1229. While the court did not require a case on all fours,
5 the court found that in order for the law to be clearly established there would need to be
6 controlling authority or a robust of consensus of cases of persuasive authority that had previously
7 held that it would be cruel and unusual punishment to expose prisoners to a heightened exposure
8 to Valley Fever spores. Hines, 914 F.2d at 1230. Similar to the district court’s previous
9 findings, see Smith v. Schwarzenegger, 137 F.Supp.3d 1233, 1242-1251 (E.D. Cal. 2015), aff’d
10 sub nom. Hines, 914 F.3d 1218; the Ninth Circuit found that no such precedent exists. Hines, 914
11 F.3d at 1230. The court also found that the risk was not so clear or obvious that exposing
12 inmates to Valley Fever would violate the Eighth Amendment. Id. at 1230. More specifically,
13 the Court found it was not obvious so that no reasonable prison official would have thought that
14 free society would not have tolerated the risk. Id. at 1231. The plaintiffs failed to meet their
15 burden because “a federal court supervised the officials’ actions, and there is no evidence that
16 ‘society’s attitude had evolved to the point that involuntary exposure” to such a risk ‘violated
17 current standards of decency,’ especially given that millions of free individuals tolerate a
18 heightened risk of Valley Fever by voluntarily living in California’s Central Valley and
19 elsewhere. Those two facts mean that a reasonable official could have thought that he or she was
20 complying with the Constitution.” Id.

21 Although Plaintiff concede that Hines is controlling in this action they argue that the
22 Ninth Circuit was wrong in finding that the law was not clearly established and that the holding
23 regarding societal expectations with respect to Valley Fever is factually and legally inaccurate.
24 Plaintiff is reminded as the Supreme Court recently stated,

25 “Overruling precedent is never a small matter.” Kimble v. Marvel Entertainment,
26 LLC, 576 U. S. —, —, 135 S.Ct. 2401, 2409, 192 L.Ed.2d 463 (2015).
27 Adherence to precedent is “a foundation stone of the rule of law.” Michigan v.
28 Bay Mills Indian Community, 572 U.S. 782, 798, 134 S.Ct. 2024, 188 L.Ed.2d
1071 (2014). “[I]t promotes the evenhanded, predictable, and consistent
development of legal principles, fosters reliance on judicial decisions, and
contributes to the actual and perceived integrity of the judicial process.” Payne v.

1 Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). To be
2 sure, stare decisis is “not an inexorable command.” Id., at 828, 111 S.Ct. 2597.
3 But any departure from the doctrine demands “special justification”—something
4 more than “an argument that the precedent was wrongly decided.” Halliburton
Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 266, 134 S.Ct. 2398, 189 L.Ed.2d
339 (2014).

5 Kisor v. Wilkie, 139 S. Ct. 2400, 2422 (2019).

6 “The doctrine of stare decisis reflects a judgment that in most matters it is more important
7 that the applicable rule of law be settled than that it be settled right.” Knick v. Twp. of Scott,
8 Pennsylvania, 139 S. Ct. 2162, 2177 (2019)) (internal punctuation and citations omitted). Stare
9 decisis “ ‘is at its weakest when we interpret the Constitution,’ . . . because only [the Supreme
10 Court] or a constitutional amendment can alter our holdings.” Knick, 139 S. Ct at 2177 (quoting
11 Agostini v. Felton, 521 U.S. 203, 235 (1997)). But “even in constitutional cases, a departure
12 from precedent ‘demands special justification.’ ” Gamble v. United States, 139 S. Ct. 1960,
13 1969 (2019) (quoting Arizona v. Rumsey, 467 U.S. 203, 212 (1984)).

14 The Hines court held that the officials were entitled to qualified immunity against the
15 Eighth Amendment claims. 914 F.3d at 1232. The Ninth Circuit’s decision in Hines is
16 controlling in this action, and the Court finds that the defendants are entitled to qualified
17 immunity on the plaintiff’s claims that housing inmates in an area where they were exposed to
18 heightened exposure to Valley Fever spores violated the Eighth Amendment.⁴

19 **B. Supplemental Jurisdiction**

20 Plaintiffs have also brought state law claims of negligence in their complaints. Having
21 found that the defendants are entitled to qualified immunity on the federal claims at issue in this
22 action, no federal claims remain over which this Court has original jurisdiction. See Peralta v.
23 Hispanic Bus., Inc., 419 F.3d 1064, 1068 (9th Cir. 2005) (“In civil cases, subject matter
24 jurisdiction is generally conferred upon federal district courts either through diversity
25 jurisdiction, 28 U.S.C. § 1332, or federal question jurisdiction, 28 U.S.C. § 1331.”) Here
26 diversity jurisdiction does not exist because the parties would all be citizens of California. The
27 only claims remaining are the state law claims over which the Court has supplemental

28 ⁴ The Court declines Plaintiffs’ invitation to use it already strained resources to discuss the additional issues raised in the objection.

1 jurisdiction. See 28 U.S.C. § 1367(c)(3). The Court considers whether it should continue to
2 exercise supplemental jurisdiction over the state law claims.

3 Where a district court has original jurisdiction, it may exercise supplemental jurisdiction
4 over all claims that are that are so related that they form part of the same case or controversy. 28
5 U.S.C. § 1367(a). As relevant here, the district court may decline to exercise supplemental
6 jurisdiction where all claims over which the court has original jurisdiction have been dismissed.
7 28 U.S.C. § 1367(c)(3). “A district court’s decision whether to exercise that jurisdiction after
8 dismissing every claim over which it had original jurisdiction is purely discretionary.” Carlsbad
9 Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639 (2009). “To decline jurisdiction under §
10 1367(c)(3), the district court must first identify the dismissal that triggers the exercise of
11 discretion and then explain how declining jurisdiction serves the objectives of economy,
12 convenience and fairness to the parties, and comity.” Trustees of Constr. Indus. & Laborers
13 Health & Welfare Tr. v. Desert Valley Landscape & Maint., Inc., 333 F.3d 923, 925 (9th Cir.
14 2003). Once the federal claim on which jurisdiction exists has been proven to be unfounded at
15 summary judgment, this allows courts to avoid determining issues of state law. Id.; Bryant v.
16 Adventist Health Sys./W., 289 F.3d 1162, 1169 (9th Cir. 2002).

17 “[D]istrict courts [should] deal with cases involving pendent claims in the manner that
18 best serves the principles of economy, convenience, fairness, and comity which underlie the
19 pendent jurisdiction doctrine.” City of Chicago v. Int’l Coll. of Surgeons, 522 U.S. 156, 172–73
20 (1997) (quoting Carnegie–Mellon Univ. v. Cohill, 484 U.S. 343, 357 (1988)). “[I]n the usual
21 case in which all federal-law claims are eliminated before trial, the balance of factors . . . will
22 point toward declining to exercise jurisdiction over the remaining state-law claims.” Acri v.
23 Varian Assocs., Inc., 114 F.3d 999, 1001 (9th Cir.), supplemented, 121 F.3d 714 (9th Cir. 1997),
24 as amended (Oct. 1, 1997) (quoting Carnegie–Mellon Univ., 484 U.S. at 350 n.7).

25 Given that this case is at an early state of the proceedings, the court should decline to
26 exercise supplemental jurisdiction since there are no remaining federal claims. See Carnegie-
27 Mellon Univ., 484 U.S. at 350 (holding that “[w]hen the balance of . . . factors indicates that a
28 case properly belongs in state court, as when the federal-law claims have dropped out of the

1 lawsuit in its early stages and only state-law claims remain, the federal court should decline the
2 exercise of jurisdiction by dismissing the case without prejudice”); see also United Mine
3 Workers of America v. Gibbs, 383 U.S. 715, 726 (1966) (“Needless decisions of state law should
4 be avoided both as a matter of comity and to promote justice between the parties, by procuring
5 for them a surer-footed reading of applicable law.”); Harrell v. 20th Century Insurance Co., 934
6 F.2d 203, 205 (9th Cir. 1991) (“it is generally preferable for a district court to remand remaining
7 pendent claims to state court).

8 Here, all the federal claims have been dismissed because the defendants are entitled to
9 qualified immunity. The cases are all still at an early stage of the proceedings as no answer has
10 been filed and a scheduling conference has not yet occurred. As the only remaining claims
11 would be state law causes of action, it is recommended that the court decline to exercise
12 supplemental jurisdiction over the state law claims in these actions.

13 **V.**

14 **CONCLUSION AND RECOMMENDATION**

15 Based on the foregoing, the Court HEREBY RECOMMENDS that:

- 16 1. The motions to dismiss on the ground that the defendants are entitled to qualified
17 immunity be GRANTED; and
18 2. The Court decline to exercise supplemental jurisdiction over the remaining state
19 law claims..

20 This findings and recommendations is submitted to the district judge assigned to this
21 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **fourteen**
22 **(14) days** of service of this recommendation, any party may file written objections to this
23 findings and recommendations with the court and serve a copy on all parties. Such a document
24 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
25 district judge will review the magistrate judge’s findings and recommendations pursuant to 28
26 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

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1 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th
2 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: July 30, 2019


UNITED STATES MAGISTRATE JUDGE

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