

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JIANGONG LEI,

Plaintiff,

v.

CITY OF LYNDEN, LYNDEN
CHAMBER OF COMMERCE, *LYNDEN
TRIBUNE*, GARY VIS, TIM
NEWCOMB, JOHN DOES, and JANE
DOES,

Defendants.

CASE NO. C14-0650-JCC

ORDER

This matter comes before the Court on Defendants *Lynden Tribune*'s and Tim Newcomb's Special Motion to Strike All Claims Pursuant to Revised Code of Washington 4.24.525 (Anti-SLAPP Motion) (Dkt. No. 17). Having thoroughly considered the relevant record, the Court concludes that it does not have supplemental jurisdiction over Plaintiff's state law defamation claims against Defendants *Lynden Tribune* and Tim Newcomb. Accordingly, this Court dismisses Plaintiff's "Claim C" for "libel and slander, and instigation of hatred" and dismisses Defendants *Lynden Tribune* and Tim Newcomb from the case entirely. Defendants' Anti-SLAPP Motion (Dkt. No. 17) is stricken as moot and the request for oral argument is denied.

1 **I. BACKGROUND**

2 Plaintiff Jiangong Lei is a real estate developer from Tacoma, Washington, who owns
3 several commercial properties around Western Washington. On December 29, 2006, he
4 purchased the Dutch Village Mall in Lynden, Washington for 1.23 million dollars. (Defendants
5 *Lynden Tribune*'s and Tim Newcomb's Answer to Complaint, Dkt. No. 22 at 2.)

6 Two of the several Defendants sued by Plaintiff, the *Lynden Tribune* and its assistant
7 editor Tim Newcomb, allege that after Plaintiff assumed ownership of the Dutch Village Mall, he
8 allowed it to fall into disrepair, and also evicted and sued several of his tenants. On May 2,
9 2012, over five years after Plaintiff purchased the Mall and after interviewing several tenants and
10 townspeople, Tim Newcomb published a *Tribune* article entitled "The Decline of Dutch Village
11 Mall: 25 Years Later, the Building Shows its Age with an Absentee Owner." (Defendants' Anti-
12 SLAPP Motion, Dkt. No. 17 at 2.) The article included statements deploring the fact that the
13 windmill atop this "historic downtown front door" no longer spun, statements that Plaintiff had
14 "failed to keep tenants, suing more tenants than not, according to anonymous former tenants,"
15 and that the koi fish in the Mall's faux canal were prone to swimming aimlessly.¹ (Article, Dkt.
16 No. 24, Ex. 1-C.) Tim Newcomb quoted an anonymous source who called Plaintiff, a resident of
17 Tacoma, an "absentee owner." (*Id.*) Mr. Newcomb reported that Mr. Lei "did not return calls to
18 the *Tribune* seeking comment for this article." (*Id.*) Mr. Newcomb included in the article the
19 statements of an innkeeper, Kate Vander Laan, who shared space with the Mall at the Dutch
20 Village. She is cited as saying that "the facility needs major repairs, but Lei has been unwilling
21 to make them," and that "[Lei] is not doing anything . . . Yeah, he's not an easy person to work
22 with." (*Id.*) Another tenant, whom Tim Newcomb reported wished to remain anonymous for
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25 ¹ In the exhibits and declarations accompanying their Anti-SLAPP Motion, Defendants have
26 offered substantial evidence for the truth of these statements. However, for jurisdictional issues
the Court will not reach the truth of these matters, and so a recital of the evidence supporting the
truth of the article's statements is omitted.

1 fear of being sued by Plaintiff, was quoted as stating “[y]ou can’t deal with him. It is his way or
2 you’re out. He would only negotiate through the mail. He was suspicious of everybody. If you
3 are scared of your landlord, it doesn’t work.” (*Id.*)

4 Two years later, without ever having requested a correction or complaining about the
5 article, Plaintiff sued editor Tim Newcomb and the *Lynden Tribune* for defamation (“Claim C.
6 Libel and Slander, and Instigation of Hatred.”) (Amended Complaint, Dkt. No. 51 at 9.) In
7 response, these Defendants have filed an Anti-SLAPP (Anti-Strategic Lawsuit Against Public
8 Participation) Motion for fees, costs, and a mandatory \$10,000 award to each Defendant, under
9 RCW 4.24.525, a Motion now before the Court. (Dkt. No. 17.)

10 Years earlier, Plaintiff had experienced tense relations with the director of Lynden’s
11 Chamber of Commerce. Plaintiff alleges that Mr. Vis (the director) said he was “not available”
12 one time when Plaintiff paid him a “special visit” and, moreover, that Mr. Vis did not “call back”
13 to set up an alternate meeting time. (Amended Complaint, Dkt. No. 51 at 3.) Plaintiff claims
14 that Mr. Vis “pressured him to reduce rent for all local tenants,” and showed up uninvited to a
15 meeting Plaintiff had with one of his tenants. (*Id.* at 4.) Additionally, Plaintiff states that one
16 time when he and Mr. Vis were standing outside the Mall talking, Mr. Vis conveyed greetings to
17 many passersby, allegedly “showing off his popularity.” (*Id.*) Based on these interactions,
18 Plaintiff complains that Mr. Vis “fanned numerous rumors and instigated hatred while racial-
19 profiling Plaintiff.” (*Id.*) On these grounds, Defendant sues Mr. Vis and the Chamber of
20 Commerce for “Violation of Civil Rights” (“Claim A”) under the “Civil Right[s] Act of 1866, 42
21 U.S.C. §§ 1981, 1982, 1983, 1985, 1986, 3631,” (*id.* at 8), and for “Violation of Constitutional
22 Rights” (“Claim B”) under the Privileges and Immunities Clause, the Equal Protection Clause,
23 and 42 U.S.C. §§ 2000(d) and 3798(d). Plaintiff also sues Mr. Vis under “Claim E. Interference
24 of Business Expectancy and Conflict of Interest.” (*Id.* at 10.) Whether the Chamber of
25 Commerce is a municipal or private entity and whether Mr. Vis was a municipal officer at the
26 time of these events is unclear. The City of Lynden avers that Mr. Vis used to be the City

1 Councilman, but that Mr. Vis had completed his term before the events giving rise to these
2 claims took place, and that he was not employed by the City in any capacity during the relevant
3 period. (Defendant City of Lynden’s Answer, Dkt. No. 41 at 2.)

4 Plaintiff also has complaints against the City of Lynden. He claims that the City of
5 Lynden “inspected Plaintiff’s building more frequently than . . . other buildings in the town.”
6 (Amended Complaint, Dkt. No. 51 at 4.) Further, Plaintiff alleges that two windows in the Mall
7 were broken, someone broke into the Mall, and someone assaulted him on the street, but that
8 when he reported these incidents to the Lynden Police, “the record from public disclosure
9 showed no investigation was conducted on any of them . . . [and] the City threatened code
10 enforcement” with regard to the broken windows. (*Id.* at 6.) Plaintiff claims to have met with
11 the police chief and explained his theory these actions were “criminal sabotages and even . . .
12 possible hate-crimes, but the record revealed no investigation and no report was ever written.”
13 (*Id.* at 7.) Plaintiff also blames the City for allowing “Mr. Vis’s out of the ordinary conduct[.]”
14 (*Id.* at 9.) Plaintiff does not allege in what capacity the City had control over Mr. Vis. Based on
15 these allegations, Plaintiff sues the City of Lynden under the two claims detailed in the previous
16 paragraph (Claim A for Violations of Civil Rights and Claim B for Violations of Constitutional
17 Rights).

18 Finally, Plaintiff sues several John and Jane Does for “broad community racial action.”
19 (*Id.* at 8.) Plaintiff alleges that several unnamed persons “boycotted” him (it is unclear whether
20 Mr. Lei means himself personally or his tenants’ stores) and discouraged prospective tenants
21 from renting from him. (*Id.* at 4-5.) Plaintiff alleges that a “manager of a local organization . . .
22 refused to shake hands” with him. (*Id.* at 3.) He claims that someone in the community poured
23 malodorous liquid from the fish market into a faux canal that flowed past the Mall, broke two of
24 the windows in the Mall, and that he faced unspecified “increasing violent attacks.” (*Id.* at 7.)
25 Against these John and Jane Does, Plaintiff brings “Claim D. Harassment, Assault, Sabotage and
26 Federal Hate Crime,” (*id.* at 10), purportedly based on 42 U.S.C. §§ 1985 and 1986, the

1 “common laws of the United States,” and RCW 9A.36.080.

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3 **II. DISCUSSION**

4 **A. Jurisdictional Questions**

5 Before the Court may consider Defendants Tim Newcomb’s and the *Lynden Tribune*’s
6 Anti-SLAPP Motion, it must establish its jurisdiction over Plaintiff’s claims against them.
7 Plaintiff’s claims for libel and slander are state law claims. Therefore, Plaintiff has no federal
8 question jurisdiction under 28 U.S.C. § 1331. Plaintiff is a Washington citizen and Tim
9 Newcomb and the *Lynden Tribune* are both citizens of Washington. Therefore, nor is there
10 diversity jurisdiction under 28 U.S.C. § 1332. Thus, Plaintiff’s remaining opportunity for
11 establishing subject matter jurisdiction over his Claim C for Libel and Slander against Tim
12 Newcomb and the *Lynden Tribune* is supplemental jurisdiction under 28 U.S.C. § 1367.

14 This statute provides that:

15 Except as provided in subsections (b) and (c) or as expressly provided
16 otherwise by Federal statute, in any civil action of which the district courts
17 have original jurisdiction, the district courts shall have supplemental
18 jurisdiction over all other claims that are so related to claims in the action
19 within such original jurisdiction that they form part of the same case or
20 controversy under Article III of the United States Constitution. Such
supplemental jurisdiction shall include claims that involve the joinder or
intervention of additional parties.

21 28 U.S.C. § 1367(a).

22 The Court has federal question jurisdiction over Plaintiff’s Claim A for Violations of
23 Civil Rights and Claim B for Violation of Constitutional Rights against Defendants other than
24 Tim Newcomb and the *Lynden Tribune*. Whether these federal claims can form the
25 jurisdictional “anchor” for the exercise of supplemental jurisdiction over Claim C depends on
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1 whether Claims A and B (the federal questions) arise from the same “common nucleus of
2 operative fact” as does Claim C. *See Bahrapour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004)
3 (explaining that a “state law claim is part of the same case or controversy when it shares a
4 ‘common nucleus of operative fact’ with the federal claims and the state and federal claims
5 would normally be tried together”).

6 In the Ninth Circuit, there is no common nucleus of operative fact if “there is no
7 evidentiary overlap whatsoever between [the] claims.” *U.S. ex rel. Hill v. Teledyne, Inc.*, 103
8 F.3d 143 at 1* (9th Cir. 1996) (unpublished).² In the Ninth Circuit, “bare allegations of a
9 ‘common scheme’ fail to establish sufficient factual overlap.” *NetApp, Inc. v. Nimble Storage,*
10 *Inc.*, 2014 WL 1903639 at *14 (N.D. Cal. May 12, 2014).³ When the facts material to one claim
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14 ² “The district court correctly determined there is no evidentiary overlap whatsoever between
15 these claims, properly found they do not derive from a common nucleus of operative facts, and
16 rightly held it lacked supplemental jurisdiction to hear the state law breach of fiduciary duty
17 claim.” *Teledyne*, 103 F.3d at 1*.

18 ³ Six months ago in *NetApp*, the Northern District of California faced an analogous jurisdictional
19 question in a Computer Fraud and Abuse Act suit by a data storage company against a
20 competitor. The suit included several state law claims against former employees for breach of
21 contract and intentional interference with contract and contractual relations. The plaintiff,
22 NetApp, argued that there was supplemental jurisdiction for these state law claims against the
23 former employees/ a common nucleus of operative fact with the core federal claim against the
24 competitor because the claims all “related to a common scheme executed by Nimble and by the
25 individual defendants [i.e., the former employees] to harm NetApp's business interests.” *NetApp,*
26 *Inc.*, 2014 WL 1903639 at *14. In holding that such tenuous ties did not form a true common
nucleus of operative fact, the North District explained that “NetApp's CFAA claims are based on
Reynolds's unauthorized access. Reynolds was a contractor, not a NetApp employee, and his
alleged misconduct occurred in Australia after he switched to Nimble AUS. Reynolds never
signed a NetApp employment contract. By contrast, the former employees allegedly stole
information while working for NetApp in the United States, and at least Weber and Binning
allegedly discussed stealing secrets for Nimble together. Thus, contrary to NetApp's contentions,
interpretation of the NetApp employment contract is irrelevant for Reynolds. *NetApp does not*
allege that Reynolds collaborated with—or even knew—any of the five former NetApp
employees, and therefore offers no basis for finding a ‘common scheme’ between Reynolds and
these employees who are the other individual Defendants in this case.” *Id.* (emphasis added).

1 (the jurisdictional anchor) are immaterial to the other claim (the proposed supplemental
2 jurisdiction claim), Ninth Circuit courts have declined to find supplemental jurisdiction. *Id.*;
3 *Titan Global, LLC v. Organo Gold Int'l, Inc.*, 2012 WL 6019285 at *11 (N.D. Cal. Dec. 2, 2012)
4 (not reported in F. Supp. 2d).⁴

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6 **B. Plaintiff's Claims**

7 That Mr. Lei has affixed the label of “small town racial discrimination case” to the
8 myriad claims he has packaged together in the instant suit does not suffice to unify what are at
9 core three or four separate controversies. Contained in Plaintiff's Amended Complaint are one
10 state law defamation claim against the privately-owned-and-run *Lynden Tribune* and its editor,
11 several federal tort claims against the municipal government of Lynden, one “Federal Hate
12 Crime and Sabotage” claim against several unnamed private citizens of Lynden, and one
13 “Interference with Business Expectancy” claim. Far from sharing a “common nucleus of
14 operative fact,” the only common ties between the federal tort claims (police inaction) against
15 the municipality⁵ and the state law defamation claim are 1) that Plaintiff owned the Dutch
16 Village Mall that was the *subject* of the alleged defamatory article and the *situs* of the alleged
17 acts of vandalism that the police allegedly declined to investigate, and 2) Plaintiff's belief that
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21 ⁴ “The alleged failure of Romacio to abide by the alleged car rental agreement turns on whether a
22 rental agreement existed, what the specifics of that agreement were, and whether Romacio
23 complied with the alleged agreement by adequately maintaining and paying for the car. None of
24 these issues is relevant to Plaintiffs' RICO, business tort, and defamation claims. Thus, there is
25 no ‘evidentiary overlap’ between Plaintiffs' ninth claim for breach of oral agreement and
26 Plaintiffs' other claims. Therefore, the Court finds that it lacks pendant jurisdiction over
Plaintiffs' ninth claim for breach of oral agreement. Accordingly, the Court sua sponte
DISMISSES Plaintiffs' ninth claim for lack of subject matter jurisdiction.” *Titan Global LLC*,
2012 WL 6019285 at *11.

⁵ Which, among all of Plaintiff's claims, present the least-questionable federal question
jurisdiction.

1 both the alleged federal torts and state defamation tort, perpetrated by completely different
2 parties, were motivated by dislike of Plaintiff as a “foreigner.” Neither of these two facts is
3 “operative” to the claims brought by Plaintiff. The fact of Plaintiff’s ownership of the Mall
4 would be a mere background fact in both claims. And, with regard to the second common “fact,”
5 Plaintiff’s beliefs about the inner feelings and biases of the various alleged tortfeasors will have
6 no legal bearing on the disposition of either the defamation claim or the federal tort claims.

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8 As was the case in *NetApp*, there is no overlap between the facts that will be material to
9 the elements of the defamation claim against the *Tribune* and its editor and the federal tort claims
10 against the City of Lynden. The facts material to the outcome of the defamation claim consist of
11 the allegedly blighted state of Plaintiff’s properties and his ultra-litigious relationship with the
12 tenants. This is because Plaintiff must establish falsity as part of his prima facie case of
13 defamation regarding what Defendants correctly identify as a matter of public concern. Thus,
14 this suit would focus on matters such as whether Plaintiff evicted and sued several tenants,
15 whether another one of his commercial properties was shut down for health code violations at the
16 time the article was written, whether Plaintiff “chased” one of his former tenants to the U.S.
17 Supreme Court over \$4000 of unpaid rent, and whether the Mall’s decorative windmill did or did
18 not spin on a regular basis.

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20 These facts are entirely irrelevant to Plaintiff’s federal tort claims against the municipal
21 government and its alleged ancillary body, the Chamber of Commerce. The material facts to the
22 properly pleaded of those claims consist of whether Plaintiff’s complaints of vandalism and
23 assault were not investigated by the police and whether the City retaliated against Plaintiff by
24 inspecting his property more frequently than other properties. In Plaintiff’s own words, the
25 “main thrust of this [federal tort claim] is racial violence and police inaction,” *not* Plaintiff’s
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1 failure to provide custodial services for the Mall's restrooms and penchant for litigating against
2 tenants.

3 Given this lack of common factual ground, these suits do not give rise to the presumption
4 that these claims would naturally be tried together.⁶ Plaintiff's disparate claims do not truly form
5 a single Article III case or controversy. Accordingly, this Court cannot exercise Section 1367
6 supplemental jurisdiction over Plaintiff's defamation claim against the *Lynden Tribune* and Tim
7 Newcomb. *See* Fed. R. Civ. P. 12(h)(3). Plaintiff's Claim C is dismissed. As they are not
8 mentioned in any of Plaintiff's remaining claims, Tim Newcomb and the *Lynden Tribune* are
9 dismissed from this suit.
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11 **III. CONCLUSION**

12 For the foregoing reasons, Plaintiff's Claim C for "Libel and Slander and Instigation of
13 Hatred" is dismissed. Defendants Tim Newcomb and the *Lynden Tribune* are also dismissed.
14 Defendants' Anti-SLAPP Motion (Dkt. No. 17) is hereby stricken as moot.

15 DATED this 20th day of November 2014.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

23 ⁶ Further, even if, *arguendo*, there *was* a common nucleus of operative fact, this Court could
24 decline to exercise jurisdiction over these state law claims under 28 U.S.C. §1367(c). As the
25 Northern District recently articulated in *NetApp*, "even if the claims against the employees were
26 sufficiently related to the CFAA claims to form a common case or controversy under § 1367(a),
the Court exercises its discretion under § 1367(c)(2) to decline supplemental jurisdiction. The
factors of economy, convenience, fairness, and comity further confirm that NetApp's remaining
state law claims should be dismissed." *NetApp, Inc.*, 2014 WL 1903639 at *15.