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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

POINT RUSTON, LLC; MICHAEL A.
COHEN; and SILVER CLOUD, INC.,

Plaintiffs,

v.

PACIFIC NORTHWEST REGIONAL
COUNCIL OF THE UNITED
BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA; JOBS
WITH JUSTICE EDUCATION FUND
OF WASHINGTON STATE, a non-profit
corporation; JIMMY MATTA,
individually and as a representative of the
Regional Council; JACOB CARTON,
individually and as a representative of
Jobs with Justice; ADAM M. HOYT,
individually and as a representative of
Jobs with Justice; and DOES 1-50,

Defendants.

CASE NO. C09-5232BHS

ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS

This matter comes before the Court on the motion to dismiss filed by Defendants Jobs with Justice Education Fund of Washington State, Jacob Carton, and Adam M. Hoyt (collectively "JWJ"). Dkt. 22.

The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Point Ruston, LLC, is a general construction contractor and property developer
3 formed to provide management, development, and oversight services for the Point Ruston
4 project. The Point Ruston project is a master planned mixed-use development constructed
5 on a 97-acre site on the shores of Puget Sound, Washington. Plaintiff Silver Cloud, Inc.,
6 had an option to construct a hotel at Point Ruston.

7 **A. POINT RUSTON’S ALLEGATIONS**

8 In the spring of 2008, Point Ruston entered into an agreement with Rain City
9 Contractors, Inc. (“Rain City”) to provide construction of concrete foundations and other
10 concrete structures. While all other contractors retained by Point Ruston in 2008 were
11 union contractors, Rain City was not a unionized employer. After Point Ruston contracted
12 with Rain City, Defendant Pacific Northwest Regional Council of the United Brotherhood
13 of Carpenters and Joiners of America (“Regional Council”), a labor organization,
14 informed Point Ruston that it had a labor dispute with Rain City, “and that if Point Ruston
15 continued to use Rain City on the project then the Regional Council would have a dispute
16 with Point Ruston as well.” Dkt. 1 at 7 (Plaintiffs’ complaint). Point Ruston alleges that
17 soon after it contracted with Rain City, Regional Council engaged in conduct designed to
18 “compel Point Ruston to reassign concrete work being performed by Rain City to
19 employees represented by the Carpenters Union.” Dkt. 30 at 5 (Plaintiffs’ response to
20 JWJ’s motion to dismiss).

21 When Point Ruston refused to break its contract with Rain City, demonstrators
22 began appearing at Point Ruston’s construction site and sales center to “distribute
23 inflammatory flyers and leaflets prepared by the Regional Council and JWJ defendants.”
24 *Id.*, 5-6. JWJ is a non-profit corporation located in Tacoma, Washington. Dkt. 1 at 3.
25 According to its website, JWJ is “a 14 year old coalition of over 154 member
26 organizations and 5000 ‘I’ll be there’ individual pledgers fighting together for workers’
27 rights and economic & social justice.” Dkt. 22 at 15 (citation to website address omitted).
28

1 In addition to distributing the flyers and leaflets, “the demonstrators have
2 trespassed on Point Ruston’s project site and sales center, have picketed with large signs
3 and banners and a large inflatable rat and have made intimidating, untruthful, and
4 offensive comments to customers, prospective customers, employees of Point Ruston,
5 contractors, suppliers and real estate professionals.” Dkt. 30 at 6. Many of the leaflets
6 referred to the JWJ website; this website included a statement that Michael Cohen, a
7 Point Ruston managing member, was “spreading Asarco¹ dust in the surrounding
8 community Mr. Cohen’s track record is evasive, anti-worker and community,
9 corrupting our democracy, and doused with grinchy behavior.” Dkt. 1 at 9 (Plaintiffs’
10 complaint). According to Plaintiffs, JWJ has also posted the following statement on its
11 website, referring to a YouTube video: “Together, these videos demonstrate a disturbing
12 health threat to condo buyers, neighbors, workers, P[oint] Ruston visitors and anybody in
13 our community who makes contact with these people.” Dkt. 1 at 10. Plaintiffs also allege
14 that JWJ posted a separate message on its website that alleged that immigrant workers
15 reported that Point Ruston engaged in “severe union-busting tactics” including threats of
16 violence, mass firings, and other activities. *Id.* at 11.

17 In addition to these activities, Plaintiffs allege that JWJ and Regional Council
18 engaged in additional wrongful conduct. *See generally*, Dkt. 1. For example, Plaintiffs
19 maintain that Defendants also engaged in conduct designed to disrupt Point Ruston’s
20 sales and marketing activities. On March 28, 2009, Point Ruston and its realtor partner
21 scheduled a breakfast cruise on Point Ruston’s ferry, which Point Ruston used as a
22 “marketing office.” Participation in the breakfast cruise was by invitation only and
23 limited to those individuals who were prospective buyers. After the ferry departed, Point
24 Ruston representatives discovered that approximately six individuals who were not

26 ¹ Asarco was the previous owner of the Point Ruston site. The site was previously
27 designated a Superfund site by the EPA; from 1890 to 1986, the site had functioned as a lead and
28 copper smelter. Dkt. 1 at 4.

1 registrants had also boarded the ferry under false pretenses. Two of these individuals were
2 representatives of JWJ – Defendants Jacob Carton and Adam Hoyt. During a
3 presentation, the individuals who boarded the ferry “became disruptive and began asking
4 inflammatory questions that contained false allegations and suggestions intended to
5 intimidate and discourage potential buyers.” *Id.* at 19. According to Plaintiffs, one woman
6 who had boarded the ferry made a statement that an individual had died as a result of
7 complications from working at the Point Ruston site and that the site was toxic. *Id.* The
8 individuals who boarded the ferry also handed out leaflets which depicted two rats with
9 one of the rats stating, “Don’t go to Point Ruston. It will kill you.” *Id.*

10 **B. SILVER CLOUD’S ALLEGATIONS**

11 On February 4, 2009, a Regional Council representative wrote a letter to Silver
12 Cloud, informing the company that Regional Council had a labor dispute with Rain City,
13 and that if Silver Cloud used Rain City on its project on the Point Ruston site, Regional
14 Council would also have a dispute with Silver Cloud. *Id.* at 13. Regional Council further
15 informed Silver Cloud that “several Rain City workers from Point Ruston have tested
16 positive for arsenic.” *Id.* In its letter, Regional Council wondered how Silver Cloud’s
17 “future guests would feel” about workers on the Point Ruston project complaining about
18 being subjected to arsenic. *Id.*

19 After writing this letter, Regional Council picketed in front of a Seattle Silver
20 Cloud hotel and handed out leaflets which made allegations similar to those discussed in
21 Section (A) above regarding Rain City workers testing positive for arsenic. Included in
22 these leaflets was the statement: “Shame on Silver Cloud Inns and Hotels for desecration
23 of the American way of life.” *Id.*

24 **C. PLAINTIFFS’ LAWSUIT**

25 On April 21, 2009, Plaintiffs filed a complaint. Dkt. 1. Plaintiffs’ first cause of
26 action is against Regional Council only, and alleges unlawful secondary boycott, in
27 violation of 29 U.S.C. § 158(b)(4)(B) and (D) and 29 U.S.C. § 187. *Id.* at 23. Plaintiffs
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1 allege that Regional Council engaged in threatening and intimidating conduct for the
2 purpose of forcing Plaintiffs to cease doing business with Rain City. *Id.* Plaintiffs also
3 allege that Regional Council engaged in conduct such as threatening and intimidating
4 other entities to cause them to withhold services from Point Ruston and Silver Cloud,
5 threatening and/or intimidating potential lenders, retail and commercial clients, and
6 prospective home buyers. In addition, Plaintiffs allege that Regional Council failed to
7 limit leafleting, picketing, and demonstrations to places reasonably close to the situs of
8 the Regional Council’s dispute with Rain City. Plaintiffs maintain that employees, agents,
9 and representatives of the Regional Council encouraged, induced, participated in,
10 acquiesced in, and ratified these “unlawful secondary activities.” *Id.*

11 Section 8(b)(4)(B) of the LMRA prohibits secondary boycott activities. *Iron*
12 *Workers Dist. Council of the Pac. Nw. v. N.L.R.B.*, 913 F.2d 1470, 1475 (9th Cir. 1990).²
13 Secondary boycott activities are those “which are calculated to involve neutral employers
14 and employees in the union’s dispute with the primary employer.” *Id.*

15 Plaintiffs also assert the following state law claims:

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² Section 8(b)(4)(B) provides:

18 It shall be an unfair labor practice for a labor organization or its agents . . .
19 (i) to engage in, or to induce or encourage any individual employed by any person
20 engaged in commerce or in an industry affecting commerce to engage in, a strike
21 or a refusal in the course of his employment to use, manufacture, process,
22 transport, or otherwise handle or work on any goods, articles, materials, or
23 commodities or to perform any services; or (ii) to threaten, coerce, or restrain any
24 person engaged in commerce or in an industry affecting commerce, where in
25 either case an object thereof is . . . forcing or requiring any person to cease using,
26 selling, handling, transporting, or otherwise dealing in the products of any other
27 producer, processor, or manufacturer, or to cease doing business with any other
28 person, or forcing or requiring any other employer to recognize or bargain with a
labor organization as the representative of his employees unless such labor
organization has been certified as the representative of such employees under the
provisions of section 159 of this title: Provided, That nothing contained in this
clause (B) shall be construed to make unlawful, where not otherwise unlawful,
any primary strike or primary picketing; . . .

29 U.S.C. § 158(b)(4)(B)

1 1. Defamation. Plaintiffs allege that all Defendants made false statements
2 about Point Ruston, Mr. Cohen, and Silver Cloud which adversely affected business
3 operations and deterred others from dealing with Point Ruston and Silver Cloud. *Id.* at 28.

4 2. Tortious Interference with Contract. Plaintiffs allege that all Defendants
5 intentionally interfered with Point Ruston’s agreement with Rain City and another
6 contractor, Diamond Concrete, for the purpose of pressuring Point Ruston to terminate its
7 arrangement with these contractors. Plaintiffs allege that Defendants’ motive was to
8 require Point Ruston to cease using Rain City as a contractor and instead transfer or
9 reassign the work to another class or trade of employees. Plaintiffs further allege that
10 Defendants interfered with agreements between Point Ruston and customers seeking to
11 purchase condominiums, agreements between Silver Cloud and its potential customers,
12 and agreements between Point Ruston and Silver Cloud.

13 3. Tortious Interference with Business Expectancy. Plaintiffs allege that
14 Defendants engaged in conduct which interfered with Point Ruston’s business
15 expectancies with Silver Cloud, potential customers, lenders, and potential retail clients.

16 4. Trespass. Plaintiffs allege that all Defendants trespassed onto the Point
17 Ruston project site and the Point Ruston ferry.

18 5. Trespass to Chattels. Plaintiffs allege that all Defendants intentionally
19 interfered with Point Ruston property by engaging in such conduct as placing signs and
20 banners on fences.

21 6. Conversion. Plaintiffs allege that unknown individuals converted property,
22 including damaging padlocks and slashing tires.

23 Dkt. 1.

24 On May 26, 2009, JWJ filed a motion to dismiss. Dkt. 22. JWJ moves the Court to
25 dismiss Plaintiffs’ claims for lack of subject-matter jurisdiction on grounds that there is
26 no “common nucleus of operative fact” between the state claims against JWJ and the sole
27 federal claim against Regional Council. *Id.* at 6.

1 On June 9, 2009, Plaintiffs filed a response. Dkt. 30. On June 19, 2009, JWJ filed a
2 reply. Dkt. 34.

3 II. LEGAL STANDARDS

4 A. MOTION TO DISMISS UNDER RULE 12(b)(1)

5 A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(1) if,
6 considering the factual allegations in the light most favorable to the plaintiff, the action:
7 (1) does not arise under the Constitution, laws, or treaties of the United States, or does not
8 fall within one of the other enumerated categories of Article III, Section 2, of the
9 Constitution; (2) is not a case or controversy within the meaning of the Constitution; or
10 (3) is not one described by any jurisdictional statute. *Baker v. Carr*, 369 U.S. 186, 198
11 (1962); *D.G. Rung Indus., Inc. v. Tinnerman*, 626 F. Supp. 1062, 1063 (W.D. Wash.
12 1986); *see* 28 U.S.C. §§ 1331 (federal question jurisdiction) *and* 1346 (United States as a
13 defendant). When considering a motion to dismiss pursuant to Rule 12(b)(1), the court is
14 not restricted to the face of the pleadings, but may review any evidence to resolve factual
15 disputes concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d
16 558, 560 (9th Cir. 1988), cert. denied, 489 U.S. 1052 (1989); *Biotics Research Corp. v.*
17 *Heckler*, 710 F.2d 1375, 1379 (9th Cir. 1983).

18 B. SUPPLEMENTAL JURISDICTION

19 The parties agree that this Court does not have jurisdiction over Plaintiff's state
20 law claims unless it is authorized to exercise supplemental jurisdiction, and unless it
21 determines that maintaining jurisdiction over the state claims is proper. The governing
22 statute provides:

23 [I]n any civil action of which the district courts have original
24 jurisdiction, the district courts shall have supplemental jurisdiction over all
25 other claims that are so related to claims in the action within such original
26 jurisdiction that they form part of the same case or controversy under
27 Article III of the United States Constitution. Such supplemental jurisdiction
28 shall include claims that involve the joinder or intervention of additional
parties.

28 U.S.C. § 1367(a).

1 Section 1367 codified the rule set out in *United States v. Gibbs*, 383 U.S. 715
2 (1966): A federal court may exercise supplemental jurisdiction when a plaintiff has
3 alleged state and federal claims that “derive from a common nucleus of operative fact.”
4 *Gibbs*, 383 U.S. at 725. Supplemental jurisdiction is proper when a plaintiff’s state claims
5 are “so intertwined with other matters pending before the court as to make the exercise of
6 such jurisdiction over [the state claims] appropriate” and the state and federal claims are
7 such that the plaintiff “would ordinarily be expected to try them all in one judicial
8 proceeding.” *Republic of Phil. v. Marcos*, 862 F.2d 1355, 1359 (9th Cir. 1988).

9 If a court determines it has the authority to exercise supplemental jurisdiction, it
10 then decides whether it should nonetheless decline to maintain jurisdiction. This is
11 because supplemental jurisdiction is “a doctrine of jurisdiction, not of plaintiff’s right.”
12 *See Gibbs* at 726. “Its justification lies in considerations of judicial economy,
13 convenience and fairness to litigants.” *Id.* Section 1367(c) provides:

14 The district courts may decline to exercise supplemental jurisdiction
15 over a claim under subsection (a) if--
16 (1) the claim raises a novel or complex issue of State law,
17 (2) the claim substantially predominates over the claim or claims over
18 which the district court has original jurisdiction,
19 (3) the district court has dismissed all claims over which it has
20 original jurisdiction, or
21 (4) in exceptional circumstances, there are other compelling reasons
22 for declining jurisdiction.

19 III. DISCUSSION

20 A. SECTION 1367(a) ANALYSIS

21 The parties agree that the Court has original jurisdiction over Plaintiffs’ LMRA
22 claim, but dispute whether Plaintiffs’ state law claims against JWJ arise from a “common
23 nucleus of operative fact.”

24 The parties provided several cases which describe what is meant by a “common
25 nucleus of operative fact.” In *Chelsea Condo. Unit Owners Ass’n v. A. St. Condo. Group*,
26 468 F. Supp. 2d 136 (D.D.C. 2007), the district court stated that a common nucleus exists
27 when there is “a link or overlap” between the facts of the state and federal claims.
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1 *Chelsea*, 468 F. Supp. 2d at 141. Conversely, *Chelsea* stated that supplemental
2 jurisdiction is not proper when there is almost no factual or legal overlap between the
3 state and federal claims. *Id.* The court also looked to whether the facts needed to prove
4 the federal claim would also be needed to prove the state claims. *Id.* at 142; *accord Salei*
5 *v. Boardwalk Regency Corp.*, 913 F. Supp. 993, 999 (E.D. Mich. 1996) (facts relevant to
6 resolution of federal claim must not be separate and distinct from those facts that bear on
7 the state claims). In an unpublished opinion, a Ninth Circuit district court looked to
8 whether the state and federal claims involve the same facts, occurrences, witnesses and
9 evidence. *U.S. Chess Fed’n, Inc. v. Polgar*, 2009 WL 981257, *3 (N.D. Cal. 2009)
10 (*citation omitted*). “Even a ‘loose, factual connection between the claims is generally
11 sufficient.’” *Id.* (*quoting Ammerman v. Sween*, 54 F.3d 423, 424 (7th Cir. 1995)); *but see*
12 *Lyon v. Whisman*, 45 F.3d 758, 761-62 (3d Cir. 1995) (citing cases which have rejected
13 the “loose nexus” test).

14 The Court concludes that, under any of the standards discussed above, Plaintiffs
15 have demonstrated that the state claims asserted against JWJ and the federal claim
16 asserted against Regional Council arise from a common nucleus of operative fact.

17 JWJ argues that the federal claim against Regional Council involves disparate facts
18 because Plaintiffs must prove that Regional Council acted coercively, with intent to force
19 the cessation of business activities, whereas the state claims against JWJ involve only a
20 dispute concerning JWJ’s expressive activities. As an example, JWJ argues that evidence
21 offered to prove JWJ made unlawful, defamatory statements regarding Plaintiffs would
22 bear no weight toward proving that Regional Council, “an unrelated labor organization
23 participating in a labor dispute, violated the LMRA.” Dkt. 22 at 17.

24 JWJ’s arguments may have been more persuasive had Plaintiffs not alleged that
25 Regional Council and JWJ often colluded in various activities designed to persuade
26 neutral employers and individuals to cease dealing with Plaintiffs. JWJ contends that
27 Plaintiffs’ assertion that JWJ operated as an “agent” of Regional Council is merely
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1 conclusory, and therefore should not be considered in the Court’s Section 1367(a)
2 analysis. *See* Dkt. 22 at 16 n. 1 (*citing Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009)). JWJ’s
3 argument that Plaintiffs failed to provide factual allegations in support of its statement
4 that JWJ acted as an agent of Regional Council is not persuasive. For example, Plaintiffs
5 allege that Regional Council distributed flyers prepared by JWJ, many of which referred
6 to JWJ’s website, where various statements now challenged by Plaintiffs were allegedly
7 posted. In addition, Plaintiffs allege that JWJ members boarded the Point Ruston ferry
8 and engaged in behavior such as handing out additional flyers and disrupting a
9 presentation.³ Plaintiffs allege that the ferry incident took place shortly after Regional
10 Council representatives engaged in picketing and threatening behavior in an effort to
11 interfere with Point Ruston’s marketing activities. These and other allegations are
12 specific, and are distinct from the conclusory, “bare assertions” discussed by the Supreme
13 Court in *Iqbal*. Accordingly, for purposes of deciding the instant motion, the Court
14 accepts the factual allegations as true.

15 The facts needed to prove Plaintiffs’ LMRA claim will likely be the same or
16 sufficiently similar to those needed to prove Plaintiffs’ state law claims. JWJ’s apparent
17 suggestion that supplemental jurisdiction is lacking because the elements of the LMRA
18 claim are not the same as the elements of the state law claims is not convincing. *See* Dkt.
19 34 at 4. While Plaintiffs may offer different evidence to prove the different elements of
20 the federal claim and state claims, Plaintiffs have demonstrated that the core factual
21 allegations form the basis of all the claims. For example, Plaintiffs may offer evidence of
22 a flyer prepared by JWJ, and distributed by Regional Council and JWJ representatives, in
23 an effort to prove the coercion element of the LMRA claim, as well as the falsity element

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25 ³ JWJ also argues that it could not be an agent of Regional Council because Regional
26 Council is not a member of JWJ, characterizing Regional Council as an “unrelated labor
27 organization participating in a labor dispute.” Dkt. 22, 16-17. JWJ claims that it is “absurd” to
28 suggest that JWJ was motivated by a desire to pressure Plaintiffs to reassign work, Dkt. 34 at 4
n. 2, and that it “played no role” in the labor dispute at issue in this case. Dkt. 22 at 9. These are
factual arguments that are not determinative of the instant motion.

1 of the defamation claim. In addition, Plaintiffs may offer evidence of the ferry incident to
2 prove coercion, but also to prove the elements of trespass. Finally, evidence necessary to
3 prove coercion may also apply to the business interference claims, trespass to chattels,
4 and conversion claims.

5 Plaintiffs provide several examples of the operative facts that overlap between the
6 federal claim and the state claims:

7 [P]laintiffs' [LMRA] claim to recover damages for illegal secondary boycott
8 activities and threats to force and coerce assignment of particular work are
9 based upon various actions of defendants, including facts that form the basis
10 of the claims of defamation, interference, trespass, and conversion. Similarly,
11 the claim for defamation is based upon defamatory remarks which are
12 intertwined with the defendant Regional Council's effort to persuade neutral
13 employers to cease dealing with plaintiffs. Often the defamatory remarks
14 were published in handouts or banners. The JWJ defendants frequently
15 engaged in these activities in the presence of or in cooperation with the
16 Regional Council.

17 Also, the state claims for interference with contract and interference
18 with business expectancy allege that the defendants have interfered with
19 agreements between Point Ruston and Rain City (and Diamond Concrete).
20 This is the same subject matter as Counts One and Two of the [LMRA] claim
21 alleging that the Regional Council has engaged in unlawful activities in order
22 to persuade a reassignment of work from Rain City (and/or Diamond
23 Concrete) to others. The interference claims also allege interference between
24 plaintiffs and their respective customers and vendors. Again, these allegations
25 are similar to the secondary boycott allegations contained in Count One of the
26 [LMRA] claim. Finally, the trespass claims and conversion claims assert that
27 defendants have engaged in unlawful activities in violation of state laws. At
28 the same time that the defendants were engaged in these activities, the
Regional Council, by way of picketing and demonstrating, was also engaged
in acts in violation of [the LMRA].

Dkt. 30, 11-12.

B. SECTION 1367(c) ANALYSIS

Defendants maintain that even if supplemental jurisdiction is authorized, the Court
should decline to exercise jurisdiction because (1) state law claims substantially
predominate over the sole federal claim, (2) at least one of Plaintiffs' state law claims
raises novel or complex issues of state law, and (3) there are exceptional circumstances
which provide compelling reasons for declining jurisdiction.

1 **1. Whether State Claims Substantially Predominate Over LMRA Claim**

2 If state claims substantially predominate, “whether in terms of proof, of the scope
3 of the issues raised, or of the comprehensiveness of the remedy sought,” over a plaintiff’s
4 federal claim, a court may decline to exercise supplemental jurisdiction. *See Gibbs*, 383
5 U.S. at 726-27; *see also* 28 U.S.C. 1367(c)(2).

6 JWJ first maintains that the Court should decline to exercise supplemental
7 jurisdiction because the number of state claims “drastically” outweighs the sole federal
8 claim in this case. While the Court may consider the number of state claims compared to
9 the number of federal claims, this factor alone is not determinative. *See Borough of West*
10 *Mifflin v. Lancaster*, 45 F.3d 780, 789 (3d Cir. 1995).

11 JWJ next maintains that the evidence required to prove each of Plaintiffs’ state
12 claims vastly exceeds the proof required to prove the LMRA claim. JWJ further maintains
13 that trying the state and federal claims will also cause jury confusion by requiring the jury
14 to sort out the evidence presented as it pertains to the various elements of Plaintiffs’
15 claims. Finally, JWJ contends that the remedy Plaintiffs seek for their state claims
16 substantially predominates over the remedy sought for the federal claim. Plaintiffs
17 counter that the state law issues presented in this case are straight forward and are not
18 “more important, more time consuming, [or] more time consuming to resolve,” than the
19 LMRA claim. Dkt. 30 at 15.

20 The Court concludes that it should not decline to exercise supplemental
21 jurisdiction over Plaintiffs’ state law claims against JWJ because they do not
22 “substantially predominate” over the LMRA claim. The Court agrees with Plaintiffs that
23 the state law claims are not particularly complex. In addition, while proving the state law
24 claims may involve the introduction of additional evidence not necessary to prove the
25 LMRA claim, the Court, at this time, concludes that the core facts underlying the LMRA
26 claim could conceivably also be introduced in an effort to prove the state claims. This
27 does not appear to be a case where the state claims provide the “real body of [the] case, to
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1 which the federal claim is only an appendage.” *See Borough*, 45 F.3d at 789 (citing
2 *Gibbs*, 383 U.S. at 727).

3 **2. Whether Any of Plaintiffs’ Claims Involve “Novel or Complex” Issues**

4 A district court may decline to exercise supplemental jurisdiction if the claim
5 raises a novel or complex issue of state law. 28 U.S.C. § 1367(c)(1).

6 JWJ maintains that Plaintiffs’ defamation claims alleging harm to private figures
7 caused by communications on matters of “unquestionable public concern” involve novel
8 or complex issues of state law as to two issues: (1) whether a private defamation plaintiff
9 facing a motion for summary judgment must make a prima facie case showing the
10 elements of defamation with “convincing clarity” or only a preponderance of the
11 evidence, and (2) the proper standard of fault to apply in a defamation case where a
12 private figure is allegedly harmed by a communication addressing a matter of public
13 concern. Dkt. 22 at 21. Plaintiffs counter that the issues identified by JWJ are not
14 necessarily “unsettled,” and argue that Plaintiffs’ defamation claims were personalized
15 attacks and did not involve public concern.

16 The Court concludes that it would be premature at this stage of the litigation to
17 address JWJ’s concerns regarding Plaintiffs’ defamation claim. *See Gibbs*, 383 U.S. at
18 1139 (the issue of whether supplemental jurisdiction has been properly assumed is one
19 which remains open throughout the litigation).

20 **3. Whether “Exceptional Circumstances” Warrant Dismissal**

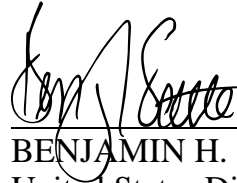
21 JWJ has not shown that exceptional circumstances warrant dismissal. *See*
22 *Executive Software N. Am. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 24 F.3d 1545, 1558
23 (9th Cir. 1994) (a district court should not decline jurisdiction under Section 1367(c)(4)
24 absent “quite unusual” circumstances).

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IV. ORDER

Therefore, it is hereby **ORDERED** that
Defendants' motion to dismiss (Dkt. 22) is **DENIED**.

DATED this 27th day of July, 2009.



BENJAMIN H. SETTLE
United States District Judge