

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 JANN PROPP-ESTIMO,

6 Plaintiff,

7 v.

8 LEWIS COUNTY, et al.,

9 Defendants.

CASE NO. C17-5559 BHS

ORDER REQUESTING
ADDITIONAL BRIEFING

10 This matter comes before the Court on Plaintiff Jann Propp-Estimo's motion for
11 temporary restraining order (Dkt. 17). The Court has considered the pleadings filed in
12 support of and in opposition to the motion and the remainder of the file and hereby
13 requests additional briefing for the reasons stated herein.

14 **I. PROCEDURAL AND FACTUAL BACKGROUND**

15 On July 13, 2017, Propp-Estimo filed a complaint against Defendants Lewis
16 County, Lewis County Animal Shelter, Lewis County Sheriff's Office, Gabriel Frase, and
17 Amy Hanson ("Defendants"). Dkt. 1-1. Propp-Estimo asserts seven causes of action
18 stemming from the seizure and judicially ordered euthanasia of her dog Hank. *Id.*
19 Unbeknownst to Propp-Estimo, Hank was previously named Tank and had been declared
20 a dangerous animal while in the possession of his previous owner. Although Propp-
21 Estimo adopted Hank "as-is" from the animal shelter, no one informed Propp-Estimo of
22 Hank's history. On May 9, 2017, Detective Frase contacted Propp-Estimo regarding

1 Hank. Dkt. 7, Declaration of PES, ¶ 24. Detective Frase eventually seized Hank at
2 Propp-Estimo's son's home later that afternoon. *Id.* ¶ 28.

3 On June 19, 2017, Lewis County adopted § 6.05.155 entitled "Judicial removal of
4 dangerous animal designation." The provision applies "retrospectively to all animals
5 which have been designated as dangerous animals and which are in the possession of
6 Lewis County's animal shelter on the date of its enactment." Lewis County Code, §
7 6.05.155(8). The provision also grants the judicial officer the power to declare an animal
8 a "dangerous animal" and order "that it be humanely destroyed." *Id.*

9 The same day the county adopted the ordinance, Lewis County District Judge
10 R.W. Buzzard held a hearing regarding Hank. Judge Buzzard declared Hank a dangerous
11 animal and ordered that he be humanely destroyed within 48 hours. Dkt. 8 at 90–91.
12 Propp-Estimo immediately appealed the ruling to the Lewis County Superior Court, and
13 Superior Court Judge James Lawler stayed the euthanasia until August 31, 2017. Dkt. 6
14 at 7.

15 On July 20, 2017, Defendants removed the complaint to this Court. Dkt. 1. On
16 August 1, 2017, Propp-Estimo filed a motion for a temporary restraining order. Dkt. 6.
17 On August 2, 2017, Defendants responded. Dkt. 10. On August 7, 2017, the Court
18 denied the motion concluding that Propp-Estimo had "failed to show that she is likely to
19 succeed on the merits or that an injunction is in the public interest." Dkt. 14.

20 On August 14, 2017, Propp-Estimo filed a revised motion for a preliminary
21 injunction. Dkt. 17. On September 5, 2017, Defendants responded. Dkt. 18. On
22 September 8, 2017, Propp-Estimo replied. Dkt. 19.

1 In her reply, Propp-Estimo asserts that the superior court refused to enter the
2 parties' stipulation to release Hank and dismiss the appeal and, instead, issued an oral
3 ruling affirming Judge Buzzard's order that Hank be euthanized. *Id.*

4 II. DISCUSSION

5 The unique procedural posture of this matter and the state court proceeding raise
6 numerous questions regarding this Court's jurisdiction and power to grant relief. First, it
7 is unclear whether the state proceeding is final or still ongoing. If it is final, then Propp-
8 Estimo may be barred from relitigating either the entire dispute or some claims in federal
9 court. *Noel v. Hall*, 341 F.3d 1148, 1163–64 (9th Cir. 2003) ("if the federal plaintiff and
10 the adverse party have already litigated the state court suit to judgment, the federal
11 plaintiff may be precluded from relitigating that dispute under the interjurisdictional
12 preclusion rule of 28 U.S.C. § 1738."). Although Defendants argue that the *Rooker–*
13 *Feldman* doctrine bars Propp-Estimo's federal suit, Propp-Estimo asserts some claims for
14 damages that do not appear to be "inextricably intertwined" with the state court
15 declaratory judgment or disposition of property action. *See id.* at 1158–61. Therefore,
16 the Court requests additional briefing on the finality of the state court action and
17 application of relevant precedent precluding this Court's involvement in matters that may
18 have been reduced to final judgment.

19 Second, if the state court matter is not final and is an ongoing proceeding, then the
20 Court should most likely abstain from considering some of Propp-Estimo's claims. It
21 seems undisputed that the state court action involves the disposition of Propp-Estimo's
22 dog, which, for legal purposes, is considered property. If concurrent proceedings involve

1 claims regarding the disposition of property, then “the court first assuming jurisdiction
2 over property may exercise that jurisdiction to the exclusion of other courts.” *Colorado*
3 *River Water Conservation Dist. v. U. S.*, 424 U.S. 800, 818 (1976). “The doctrine of
4 prior exclusive jurisdiction applies to a federal court’s jurisdiction over property only if a
5 state court has previously exercised jurisdiction over that same property and retains that
6 jurisdiction in a separate, concurrent proceeding.” *Sexton v. NDEX W., LLC*, 713 F.3d
7 533, 537 (9th Cir. 2013). “[W]hen ‘one court is exercising *in rem* jurisdiction over a res,
8 a second court will not assume *in rem* jurisdiction over the same res.’” *Id.* (quoting
9 *Chapman v. Deutsche Bank Nat’l Trust Co.*, 651 F.3d 1039, 1043 (9th Cir. 2011)).
10 Applying this doctrine to the current facts, it appears that the Court may not assert
11 jurisdiction over Propp-Estimo’s property. The Court requests additional briefing on this
12 issue as well.

13 **III. ORDER**

14 Therefore, it is hereby **ORDERED** that the parties may submit simultaneous
15 additional responses no later than September 29, 2017, and simultaneous additional
16 replies no later than October 6, 2017, and the Clerk shall renote Propp-Estimo’s motion
17 for consideration on the Court’s October 6, 2017 calendar.

18 Dated this 20th day of September, 2017.

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21 BENJAMIN H. SETTLE
22 United States District Judge