

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Jennifer Thompson, Corey Anderson, Olatokunbo Bajulaiye, Michael Bird, Nathan Boisclair, Jessica Bremer, Alan Buckel, Joshua Camp, Nicholas Carmisito, Shawn Carson, Christiana Childers, Guy Courts, Anne Crivea, Daniel Desprez, Andrea Doyle, Krista Dutcher, Ron Easton, Jr., Tyler Elgin, Douglas Holmes, Henry Johnson, Corliss Kalchert, Brian Kenny, Jessica King, Nicole Kruszka, Scott LaFleur, Jennifer Leal, J.T. Gordon Littleton, Jeffrey Manns, Scott Marshall, Mark Nuzzolilo, Brandon Okamoto, Andrew Popp, Daniel Rawdon, Jason Sanders, Paul Schweizer, Christopher Secord, Gary Sereno, II, Christopher Smith, Patricia Smith, Shawn Swinehart, and Garrett Whipple, individually, and on behalf of all other similarly situated individuals,

Plaintiffs,

VS.

City of Flint, a municipal Michigan corporation; Gary Hagler, Flint Chief of Police, in his individual and official capacities; Genesee County; Robert J. Pickell, Genesee County Sheriff, in his individual and official capacities; Flint Police Officers Michael Beaver, Richard Besson, Colin Birnie, Mark Blough, Renee Burnett, Alpheno Donastorg, Al Fowlkes, Bobby Fowlkes, Joseph Hall, Mira Handley, Cynthia Herfert, Leteia Hughley, Joseph Lechota, Vennette Lott, Marcus Mahan, Patrick Majestic, William Meyer, Candace Miles, Arnold Patrick, Harold Payer, Philip Smith, Wayne Suttles, Sondra Taylor, Dominic Teft, Michael Vance, Rogelio Villarreal, Scott Watson and Terrell Weston, in their individual and official capacities; Genesee County Deputies Jeff Antcliff, Dean Curtis, Sandy Dunlap, David Dwyre, David MacDonald, Gerald Parks, Tom Pyles, Kevin Shanlian, Russ Sorenson, Chris Swanson, Mike Tocarchick, Jerry Wilhelm and Mike Wolosuk, in their individual and official capacities; jointly and severally,

Defendants.

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Case No.:4:07-cv-11107

HON. PAUL V. GADOLA
Mag. Judge Steven R. Whalen

**UNOPPOSED MOTION FOR
RECONSIDERATION OF THE
COURT'S ORDER OF PARTIAL
DISMISSAL WITHOUT
PREJUDICE AND BRIEF IN
SUPPORT OF MOTION**

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**UNOPPOSED MOTION FOR RECONSIDERATION
OF THE COURT'S ORDER OF PARTIAL DISMISSAL WITHOUT PREJUDICE**

Plaintiffs, by and through their undersigned counsel, move this Court, pursuant to Local Rule 7.1(g), for reconsideration of its Order of Partial Dismissal Without Prejudice, entered on April 6, 2007. Plaintiffs respectfully request that the Court reconsider its Order and retain supplemental jurisdiction of Plaintiffs' state law claims, and reinstate Counts III through VII in Plaintiffs' First Amended Complaint. Defendants concur in the relief requested in this Motion. Their concurrences will be filed separately with the Court.

In support of this Motion, Plaintiffs rely on the accompanying Brief in Support, and on the authorities cited therein.

Respectfully submitted,

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DATED: APRIL 19, 2007

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Case No.:4:07-cv-11107

HON. PAUL V. GADOLA
Mag. Judge Steven R. Whalen

**BRIEF IN SUPPORT OF
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COURT'S ORDER OF PATRIAL
DISMISSAL WITHOUT
PREJUDICE AND BRIEF IN
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BRIEF IN SUPPORT OF
UNOPPOSED MOTION FOR RECONSIDERATION OF THE COURT'S ORDER OF
PARTIAL DISMISSAL WITHOUT PREJUDICE

I. INTRODUCTION

This is a putative class action brought under 42 U.S.C. §1983 and Michigan law. Plaintiffs are forty-one individuals who were arrested and strip searched by Defendant police officers while attending an electronic music event at a licensed nightclub in Flint on March 20, 2005.¹ There are forty-five named Defendants, including the City of Flint, Genesee County, Flint Police Chief, Genesee County Sheriff, and the individual law enforcement officers involved in the events. On March 15, 2007, Plaintiffs filed a seven-count complaint in this Court, and amended the complaint on March 20, 2007.

Counts I and II of the amended complaint allege violations of 42 U.S.C. §1983 for deprivations under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution. The remaining counts are state law claims alleging false arrest and false imprisonment

¹ Each of the Plaintiffs was issued a ticket for a misdemeanor, Frequenting a Disorderly House under Section 31-11(e) of a Flint City Ordinance. On October 13, 2006, the Genesee County Circuit Court ruled there was no probable cause for the Plaintiffs' arrests, and on January 9, 2007, the charges were dismissed with prejudice.

(Count III); unlawful strip searches and body cavity searches in violation of MCL §764.25a and §764.25b, respectively (Counts IV and V); assault and battery (Count VI); and intentional infliction of emotional distress (Count VII) under Michigan law.

On April 6, 2007, this Court *sua sponte* entered an Order of Partial Dismissal Without Prejudice, dismissing all of Plaintiffs' state claims and retaining jurisdiction over the § 1983 federal claims in Count I and Count II. The Court declined to exercise supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

For the reasons set forth below, Plaintiffs request that the Court reconsider its April 6, 2007 Order of Partial Dismissal Without Prejudice and reinstate Counts III through VII. Defendants concur in the relief requested in this Motion.

II. ARGUMENT

Section 1367 of Title 28 provides that "the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). In interpreting this Section, the Sixth Circuit court has stated "if there is some basis for original jurisdiction, the *default assumption* is that the court *will* exercise supplemental jurisdiction over all related claims." Campanella v. Commerce Exch. Bank, 137 F.3d 885, 892 (6th Cir. 1998) (emphasis added).

A district court may decline to exercise supplemental jurisdiction over a state claim only if one of the following four exceptions to §1367 apply:

- (1) the claim raises a novel or complex issue of State law;
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

_____ In its Order, this Court declined supplemental jurisdiction based on the second (predominating federal claims) and fourth (exceptional circumstances) exceptions to §1367. Specifically, the Order states, in relevant part:

Plaintiff's state law claims would substantially expand the scope of this case beyond that necessary and relevant to the federal law claims." [citations omitted]. Moreover, the Court finds that judicial economy, convenience, fairness, and comity counsel against exercising supplemental jurisdiction in this case. [citation omitted]. Therefore, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims, Count III through VII.

Order, page 4.

The Court's Order should be reconsidered because it erroneously finds that (1) state law claims predominate over the federal claims and unnecessarily expand the scope of the suit; and (2) separating the state law claims from the federal law claims is in the best interest of judicial economy, convenience, fairness, and comity. As set forth in Plaintiffs' Amended Complaint, the same conduct giving rise to the federal claims forms the basis for the state claims. Moreover, the fact that this action is a putative class action brought against multiple governmental entities, officials, and employees presents unique circumstances that necessitate reconsideration by the Court.

A. Federal Claims Predominate Over State Claims

The federal claims in this action are constitutional claims. Plaintiffs allege that Defendants violated their rights under the Fourth Amendment to the U.S. Constitution,

made applicable to the states through the Fourteenth Amendment, by unlawfully arresting them and conducting unreasonable searches of their person and property without probable cause. Plaintiffs further allege that Defendants violated their First Amendment rights by targeting and restraining them in their exercise of freedom of expression, association and assembly with others who share a mutual interest in electronic music.

Plaintiffs' state claims allege false arrest/imprisonment, assault and battery, illegal strip searches and body searches, and intentional infliction of emotional distress. All of these claims are based on the same factual allegations supporting Plaintiffs' §1983 claim based on unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution. These claims are often adjudicated in one action, as for example a case in this Court, Chancellor v. City of Detroit, 454 F.Supp.2d 645 (E.D. Mich. 2006) (Gadola, J).

As in the instant case, Chancellor alleged violations of the Fourth Amendment to the U.S. Constitution under 42 U.S.C. § 1983, and state law claims, including false arrest and imprisonment, and intentional infliction of emotional distress. The Magistrate Judge's legal analysis for summary judgment purposes was adopted by this Court. A fair reading of the Report and Recommendation of Magistrate Judge R. Steven Whalen in Chancellor,² leads to the inescapable conclusion that the state law claims did not expand the scope of the case beyond the federal claims. Rather, the same nucleus of facts that the Court analyzed for the federal constitutional claims in Chancellor, were the same facts upon which the Court decided the state claims. Such is the case here.

² Magistrate Judge R. Steven Whalen is also assigned to the instant case.

B. Judicial Economy, Convenience, and Fairness to the Litigants Would be Served by Maintaining One Action in this Court

The nature and scope of this particular civil rights case are such that considerations of judicial economy, convenience and fairness to the litigants substantially favor the exercise of supplemental jurisdiction. This putative class action has been brought against two governmental entities and their respective officials and employees. There are forty-five (45) named Defendants. The Plaintiffs are forty-one (41) individuals who live in various parts of the country. As of this date, there are eighty-six (86) litigants. In addition, there are approximately fifty-three (53) absent putative class members of a class of ninety-four (94) individuals on whose behalf this suit was initiated. Presently, there are thirteen (13) attorneys of record, nine (9) attorneys representing the Plaintiffs with the ACLU, and the remainder representing the Defendants.

Thus, in total, there could be 139 litigants and 13 attorneys involved in prosecuting and defending this action in the coming months following class certification.

In declining to exercise supplemental jurisdiction, the Court has placed the parties in the position of having to conduct parallel class action litigation in the federal and state courts. Two courts would be utilizing limited judicial resources on the same case. The Defendant governmental entities – the City of Flint and Genesee County -- and officials and employees who work for the City and County, would spend twice as much time away from governmental activities to participate in duplicate litigation. Plaintiffs, who are geographically dispersed across the United States and overseas, would unfairly suffer economic hardship traveling to and from Michigan for parallel court proceedings, discovery depositions, and trials. In addition, parallel litigation would involve double sets of discovery

requests and responses, requests to admit, depositions, records subpoenas, as well as court appearances and filings.

Even if the parties agreed to conduct joint discovery for both proceedings, parallel litigation of this magnitude would still impose extraordinary burdens of expense and inconvenience to the parties. The differences in the federal and state rules of civil procedure would require the litigants to prepare duplicate sets of pleadings in accordance with these rules relative to discovery, motion practice, and class certification. In state court, the parties would be required to participate in mandatory case evaluation, and be subject to separate scheduling orders. Legal arguments would likely be made by either or both sides relative to res judicata and claims preclusion, depending upon which Court issued the first ruling on a question of law or fact. In short, both parties would unnecessarily incur significantly higher litigation costs and burdens by having to prosecute and defend these claims in two different forums.³

C. Separate Forums Increase the Risk of Inconsistent Decisions Creating Conflicting Standards for Law Enforcement Agencies

Plaintiffs seek injunctive and declaratory relief, in addition to money damages. Should this Court grant the requested relief and declare certain conduct unlawful or unreasonable, and a state court rules to the contrary, the Defendants would be faced with conflicting directives and inconsistent orders. This is not a desirable outcome for the parties, nor is it in the best interest of the public-at-large. Though the parties would expect rulings on the same issues to be consistent, the potential nonetheless exists for conflicting opinions if the case is bifurcated into parallel proceedings in the federal and state courts.

³ Plaintiffs' costs are being borne by the American Civil Liberties Union Fund of Michigan (ACLU), a non-profit organization. The Defendants are governmental entities, public officials and employees, whose costs presumably are borne ultimately by taxpayers.

The public policy implications of conflicting orders strongly favor maintaining this particular case as one action in this Court. Plaintiffs and Defendants both concur in the relief sought in this Motion for the reasons so stated.

III. CONCLUSION

Accordingly, the parties request that the Court reconsider its April 6, 2007 Order of Partial Dismissal Without Prejudice and reinstate Counts III through VII.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties to the above cause to each of the attorneys/parties of record herein via the Court's ECF System to their respective e-mail addresses disclosed on the Notice of Electronic Filing on **April 19, 2007**.

Signature:

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