

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MELEANIE HAIN, et al.,	:	
Plaintiffs	:	Civil Action No. 1:08-CV-2136
	:	(Chief Judge Kane)
v.	:	
	:	
	:	
MICHAEL J. DeLEO, et al.,	:	
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On November 2, 2010, the Court granted Defendants' motion to dismiss Plaintiffs' complaint. (Doc. No. 44.) In doing so, the Court granted Defendant Sheriff DeLeo qualified immunity on Plaintiffs' Second Amendment claim. (Id. at 9.) The Court also found that Plaintiffs (1) were not denied procedural due process, (2) failed to offer a persuasive basis for their substantive due process claim, (3) failed to allege an equal protection claim, (4) did not adequately allege a conspiracy, and (5) asserted no factual allegations to support a cognizable Fourth Amendment search or seizure claim. (Id. at 15, 19, 20-21, 22, 24.) Finally, the Court dismissed Plaintiffs' Monell claims against the municipal Defendants because the complaint did not contain sufficient factual matter to show the claim was facially plausible and dismissed Plaintiffs' Monell claims involving Defendant Lebanon County and Defendant Sheriff DeLeo because the claims were contradictory and not clearly alleged in the alternative. (Id. at 25-27.) In light of the Third Circuit's view that district courts must generally sua sponte extend plaintiffs an opportunity to amend the complaint before dismissal in civil rights cases, see Fletcher-Harlee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), the Court ordered

Plaintiffs to submit either an amended complaint or notice of their intent to stand on the complaint as filed. (Doc. No. 44.) On November 8, 2010, Plaintiffs submitted notice that they will not be amending the complaint and therefore stand on the complaint as filed. (Doc. No. 45.) In the Third Circuit, “a district court may dismiss the action if the plaintiff . . . files notice with the district court of his intent to stand on the complaint.” Phillips v. Cnty. of Allegheny, 515 F.3d 224, 245-46 (3d Cir. 2008).

Plaintiffs also allege claims arising under Pennsylvania law. The Court may exercise supplemental jurisdiction to hear the remaining state law claims if they arise from the same nucleus of operative fact as the federal claims. 28 U.S.C. § 1367(a). The United States Supreme Court has long counseled that “pendent jurisdiction is a doctrine of discretion, not of plaintiff’s right.” United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966).¹ Because the Court has found that the federal claims will be dismissed, the Court will exercise its discretion to dismiss the remaining state law claims. The Third Circuit has explicitly recognized that it is proper for a district court, when the federal claims are dismissed, to dismiss any pendent claims over which the Court only had supplemental jurisdiction. Hedges v. Musco, 204 F.3d 109 (3d Cir. 2000) (“[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court *must* decline to decide the pendent state claims unless considerations of

¹ The Court is given this discretion pursuant to 28 U.S.C. § 1367(c)(3), which states:

- (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if --
- ...
- (3) the district court has dismissed all claims over which it has original jurisdiction.

28 U.S.C. § 1367(c).

judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.”) (emphasis added). There is no affirmative justification for exercising supplemental jurisdiction in this case. Accordingly, the Court declines to exercise supplemental jurisdiction and Plaintiffs’ remaining state law claims are dismissed for lack of jurisdiction without comment upon the merits.

ACCORDINGLY, on this 22nd day of December 2010, for the reasons set forth more fully in the Court’s November 2, 2010 opinion (Doc. No. 44), **IT IS HEREBY ORDERED**

THAT:

1. Plaintiffs’ claims based on the Second Amendment against Defendant DeLeo in his individual capacity are **DISMISSED WITH PREJUDICE**.
2. Plaintiffs’ claims based on the Fourteenth Amendment’s Due Process Clause are **DISMISSED WITH PREJUDICE**.
3. Plaintiffs’ claims based on the Fourteenth Amendment’s Equal Protection Clause are **DISMISSED WITH PREJUDICE**.
4. Plaintiffs’ claims based on conspiracy under 42 U.S.C. §§ 1985 and 1986 are **DISMISSED WITH PREJUDICE**.
5. Plaintiffs’ claims based on the Fourth Amendment are **DISMISSED WITH PREJUDICE**.
6. Plaintiffs’ claims based on Monell against Defendant DeLeo in his official capacity and the municipal Defendants are **DISMISSED WITH PREJUDICE**.
7. The Clerk of Court is directed to enter judgment in favor of Defendants as to all federal claims.
8. The Court declines to exercise supplemental jurisdiction over Plaintiffs’ remaining state law claims; all state law claims are **DISMISSED WITHOUT PREJUDICE**.
9. The Clerk of Court is directed to close the file.

s/ Yvette Kane

Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania