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Attorney for Plaintiffs
LYNN MARIE MCCARTY and LARRY DALE MCCARTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

LYNN MARIE MCCARTY and LARRY
DALE MCCARTY,

Plaintiff,

vs.

JOHNSON & JOHNSON, DePUY, INC.,
DePUY ORTHOPAEDICS, INC., STEVE
WHITFIELD and DOES 1 through 100,

Defendants.

) Case No. 1:10-CV-00350

) **ORDER GRANTING PLAINTIFFS'**
) **MOTION TO AMEND COMPLAINT TO**
) **JOIN DEFENDANT AND REMAND TO**
) **STATE COURT**

) Complaint Filed: December 15, 2009
) Trial Date: unassigned
) Assigned to: Hon. Oliver W. Wanger

) Date: June 14, 2010
) Time: 10:00 a.m.
) Dept.: Hon. Oliver W. Wanger, Courtroom 3

On June 14, 2010, plaintiffs' motion to amend complaint to join defendant and remand to state court came before this court for hearing. The court having reviewed and considered the moving papers and the parties' oppositions thereto and having heard oral argument, and GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:

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PROOF OF SERVICE

- Defendant Steve Whitfield was not fraudulently joined to the strict liability claim, therefore this case is REMANDED to Fresno County Superior Court (Unlimited Jurisdiction) for lack of federal jurisdiction. Even if he were, plaintiffs can state a claim against San Joaquin Valley Orthopaedics, Inc. for strict liability.
- Amendment to add San Joaquin Valley Orthopaedics, Inc. is proper because plaintiffs meet all six factors expressed in *IBC Aviation Services v. Companies Mexicana de Aviation*, 125 F.Supp. 2d 1008 (N.D. Cal. 2000). Plaintiffs shall pursue amendment to join San Joaquin Valley Orthopaedics, Inc. as a defendant in Fresno County Superior Court (Unlimited Jurisdiction).
- Plaintiffs' request for attorney's fees and costs is DENIED.

IT IS SO ORDERED.

Dated: July 1, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE