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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

TAMMY PINEDA and SERGIO PINEDA, ) 1:10-cv-847-LJO-GSA  
Plaintiffs, )

v. )

GOLDEN VALLEY HEALTH CENTERS; )  
JAMES A. KRAUS; M.D.; SUSAN ) FINDINGS AND RECOMMENDATIONS  
KRAUS, M.D.; ENRIQUE ) RE: DEFENDANT STANFORD UNIVERSITY  
TALAMONTES, PA-C; BURNELL ) MEDICAL CENTER’S MOTION TO  
VASSAR, M.D.; TRONG TRINH, M.D.; ) TO REMAND  
NATALIE A. MATTOS, PA-C; T. )  
WILSON, M.D.; SILVIA DIEGO, M.D.; )  
M. CODY, P.A.; VIKRAM KHANNA )  
M.D.; MODESTO RADIOLOGICAL )  
MEDICAL GROUP, INC.; MODESTO )  
RADIOLOGY IMAGING; AJIT S. NIJJAR )  
M.D.; JOSEPH FLUENCE, M.D.; )  
MICHAEL ZEPPA, M.D.; DR. NGUYEN; )  
WARREN DAVID CLIFT, M.D.; ) (Document 19)  
STANFORD UNIVERSITY MEDICAL )  
CENTER; STEPHEN I. RYU, M.D.; )  
LESLIE DORFMAN, M.D.; UNITED )  
STATES OF AMERICA; and DOES )  
1-100, inclusive )  
Defendants. )

**I. Introduction**

On August 16, 2010, Stanford University Medical Center (“Stanford University”) filed the instant Motion to Remand. (Doc. 19). Non-oppositions to the motion were filed by defendants, Ajit S. Nijjar M.D., Warren David Clift, M.D., and Modesto Radiological Medical

1 Group Inc.<sup>1</sup> (Docs. 21 and 22). No other party responded to the motion. The Court reviewed  
2 the pleadings and determined that this matter is suitable for decision without oral argument  
3 pursuant to Local Rule 230 (c) and (g). The hearing set for September 10, 2010 at 9:30 am was  
4 vacated. (Doc. 23). Having considered all written materials submitted, it is recommended that  
5 Defendant Stanford University's Motion to Remand be GRANTED.

## 6 **II. Procedural Background**

7 Tammy and Sergio Pineda ("Plaintiffs"), filed this case on September 22, 2008, in the  
8 Stanislaus County Superior Court (Case no. 631980). The complaint alleged state law claims  
9 including medical malpractice and loss of consortium arising from defendants alleged failure to  
10 diagnose and treat Ms. Pineda's broken neck. (Doc. 1) The United States removed this action on  
11 May 13, 2010. (Doc. 1).

12 There were a total of twenty two defendants in this action including: Golden Valley  
13 Health Centers; James Kraus, M.D.; Susan Kraus, M.D.; Enrique Talamantes, PA-C; Burnell  
14 Vassar, M.D.; Trong Tringh, M.D.; Natalie Mattos, PA-C; T. Wilson, M.D.; Silvia Diego, M.D.;  
15 M. Cody, P.A.; Vikram Khanna, M.D.; Modesto Radiological Medical Group, Inc.; Modesto  
16 Radiology Imaging; Ajit Njjar, M.D.; Joseph Fluence, M.D.; Michael Zeppa, M.D.; Dr. Nguyen,  
17 M.D.; Warren David Clift, M.D.; Stanford University; Stephen I. Ryu, M.D.; Leslie Dorfman,  
18 M.D.; and the United States for America.

19 The majority of the defendants were employed by the federal government or were federal  
20 agencies. On May 25, 2010, the United States filed a Motion to Dismiss the federal defendants  
21 because Plaintiffs had not exhausted their administrative remedies under the Federal Tort Claims  
22 Act ("FTCA"). (Doc. 5). Plaintiffs did not oppose the Motion to Dismiss. (Doc. 8). On June  
23 28, 2010, Golden Valley Health Centers; James Kraus, M.D.; Susan Kraus M.D.; Enrique  
24 Talamantes, PA-C, Silva Diego, M.D.; and Vikram Khanna, M.D. were dismissed pursuant to  
25 the United States' Motion. (Doc. 11). Plaintiffs also voluntarily dismissed the other federal  
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28 <sup>1</sup> The non-oppositions were filed on August 17 and August 18, 2010.

1 defendants.<sup>2</sup> Currently, there are six remaining defendants including: Modesto Radiological  
2 Medical Group, Inc.; Modesto Radiology Imaging; Ajit Nijjar, M.D.; Joseph Fluence, M.D.;  
3 Warren Clift, M.D.; and Stanford University Medical Center.<sup>3</sup> None of the remaining  
4 defendants are employed by the federal government or are federal agencies.

5 Stanford University filed the instant Motion to Remand on the basis that federal  
6 jurisdiction no longer exists because all of the federal defendants have been dismissed from this  
7 action. As previously noted, Plaintiffs have not filed an opposition to the Motion to Remand.

### 8 **III. Discussion**

9 This case was removed pursuant to 28 U.S.C. §§ 1441, 1442(a) and 2679(d) since  
10 Plaintiffs sought damages from federal defendants for alleged torts. The federal defendants had  
11 defenses they are entitled to assert and adjudicate in federal court, including defenses under the  
12 FTCA. The state law claims were removed pursuant to supplemental jurisdiction. 28 U.S.C. §  
13 1367.

14 Since all of the federal defendants have been dismissed from this action, all that remains  
15 active in the complaint are state law claims.<sup>4</sup> “If at any time prior to judgment it appears that the  
16 district court lacks subject matter jurisdiction, the case shall be remanded ...” 28 U.S.C.  
17 1447(c); Gibson v. Chrysler Corp., 261 F. 3d 927, 932 (9<sup>th</sup> Cir. 2001). “Subject matter  
18 jurisdiction cannot be established by the parties’ consent, and a lack of subject matter jurisdiction  
19 is a non-waivable defect.” Gibson v. Chrysler Corp., 261 F. 3d at 948, see also, Lengyel v.  
20 Sheboygan County, 882 F. Supp. 137, 138 (E.D. Wis 1995) (“When a district court determines  
21 there is a lack of subject matter jurisdiction, the case shall be remanded, even if the parties prefer  
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23 <sup>2</sup> The following defendants were voluntarily dismissed by Plaintiffs either prior to or after removal: Burnell  
24 Vassar, M.D.; Trong Trinh, M.D.; Natalie Mattos, PA-C; T. Wilson, M.D.; M.Cody, P.S.; Michael Zeppa, M.D.;  
Stephen Rhu, M.D.; and Leslie Dorfman, M.D.

25 <sup>3</sup> The Court notes that Mr. Hawkins is not listed in the CM/ECF system as of the date of the filing of this  
26 motion, however, Defendant Stanford University served Mr. Hawkins with the Motion to Remand on August 16,  
2010 (Doc. 19).

27 <sup>4</sup> The Court notes that cases against the federal defendants may be initiated after the administrative remedies  
28 are exhausted. However, exhaustion of administrative remedies may take up to a year and the Court will not stay  
this action to allow Plaintiffs the opportunity to complete this process since this case is already two years old and a  
stay will be too prejudicial to the other defendants.

1 to remain in federal court.”).

2 Moreover, when state law claims are removed based on supplemental jurisdiction in  
3 conjunction with a federal question claim and the federal question claim is dismissed, the district  
4 court retains discretion to exercise supplemental jurisdiction over the remaining state law claims.  
5 When the federal claim is dropped from the suit in the early stages of litigation, as it was in this  
6 case, federal courts should decline to exercise jurisdiction over the remaining state law claims.  
7 Carnegie-Mellon Univ., 484 U.S. 343, 350 (1988) 484 U.S. at 350, 108 S.Ct. at 619 (citing  
8 United Mine Workers of America v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130,1139 (1966)).

9 Here, the Court lacks subject matter jurisdiction and the case should be remanded to the  
10 state court pursuant to 18 U.S.C. § 1447(c).

11 **IV. Conclusion and Recommendation**

12 Based on the above, IT IS HEREBY RECOMMENDED that Stanford University’s  
13 Motion to Remand be GRANTED and that the action be REMANDED to the Stanislaus County  
14 Superior Court for all further proceedings.

15 These Findings and Recommendations are submitted to the Honorable Lawrence J.  
16 O’Neill, United States District Court Judge, pursuant to the provisions of [28 U.S.C. section 636](#)  
17 (b)(1)(B). Within ten (10) days after being served with a copy, any party may file written  
18 objections with the court and serve a copy on all parties. Such a document should be captioned  
19 “Objections to Magistrate Judge’s Findings and Recommendations.” The Court will then review  
20 the Magistrate Judge’s ruling pursuant to [28 U.S.C. § 636](#) (b)(1)(c). The parties are advised that  
21 failure to file objections within the specified time may waive the right to appeal the District  
22 Court’s order. [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir. 1991\)](#).

23  
24 IT IS SO ORDERED.

25 **Dated: September 13, 2010**

/s/ Gary S. Austin  
26 UNITED STATES MAGISTRATE JUDGE