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

8 **JULIE KROGEN,**

9 **Plaintiff,**

10 **v.**

11 **UNITED STATES OF AMERICA,**

12 **Defendant.**

1:14-cv-1266-LJO-MJS

**MEMORANDUM DECISION AND
ORDER RE NOTICE OF DECISION BY
DEPARTMENT OF LABOR (Doc. 37)**

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15 Plaintiff Julie Krogen (“Plaintiff”) brings this action against Defendant the United States of
16 America (“The Government”) for the wrongful death of her husband under the Federal Torts Claims Act
17 (“FTCA”), 28 U.S.C. § 2671. On June 9, 2015, the Government moved to dismiss the case under Fed. R.
18 Civ. Pro. 12(b)(1) on the basis that Plaintiff’s claims are pre-empted by the Federal Employee
19 Compensation Act (“FECA”), 5 U.S.C. §§ 8101(1)(B), 8116(c). Mot. to Dismiss, or in the Alternative,
20 for Summ. J. (“MTD”), Doc. 25-1. On August 28, 2015, this Court found there was substantial question
21 as to whether FECA applies and stayed the case pending a determination by the Secretary of Labor as to
22 that issue. Doc. 33.

23 On December 23, 2015 the parties submitted a joint status report indicating that the Secretary
24 had reached a decision that Plaintiff’s claims are covered by FECA. Notice of Decision (“NOD”), Doc.
25 37. Accordingly, the parties requested that the stay in the case be lifted. *Id.* The Court agrees that it is

1 appropriate to lift the stay.

2 In light of the Secretary's decision, it appears that Plaintiff's claims are entirely pre-empted by
3 FECA. Accordingly, and for reasons outlined in the Court's previous order, it seems that the Court no
4 longer retains subject matter jurisdiction over this case. Thus, the Court will dismiss this case with
5 prejudice, unless Plaintiff can show cause as to why this should not be so.

6 **CONCLUSION AND ORDER**

7 For the reasons discussed above, the Court ORDERS the stay lifted in this case.

8 Plaintiff is ORDERED to show cause in writing why the Court should not dismiss the above
9 captioned case. Plaintiff's brief on this issue is due within 14 days' of this order. The Government's
10 response, if any, to Plaintiff's brief is due 7 days after Plaintiff has filed her brief or 21 days after this
11 Order is filed, whichever is later.

12 Should Plaintiff wish not to file a brief on this issue, she must file a pleading entitled "matter
13 submitted," at which point the Clerk of Court will be directed to close this case.

14 **IT IS SO ORDERED**
15 **Dated: December 30, 2015**

16 **/s/ Lawrence J. O'Neill**
17 **United States District Judge**