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

JULIE KROGEN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

1:14-cv-1266-LJO-MJS

**MEMORANDUM DECISION AND
ORDER TO CLOSE CASE**

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

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

1 appropriate to lift the stay. Doc. 38. The Court also found that, in light of the Secretary's decision, it
2 appeared that the Court lacked subject matter subject matter jurisdiction over Plaintiff's case. *Id.* The
3 Court ordered to Plaintiff to show cause in writing why the case should not be dismissed, or in the
4 alternative, to file a pleading entitled "matter submitted." *Id.* On December 31, 2015, Plaintiff filed a
5 response to the Court's order entitled "matter submitted," Doc. 39, indicating that there is no reason not
6 to dismiss the case.

7 Accordingly, and for the reasons outlined in previous orders, the Court finds that it lacks subject
8 matter jurisdiction over Plaintiff's claims and ORDERS this case to be DISMISSED WITH
9 PREJUDICE.

10 **CONCLUSION AND ORDER**

11 For the reasons discussed above, the Court ORDERS the Clerk of Court to DISMISS THIS
12 CASE WITH PREJUDICE.

13
14 IT IS SO ORDERED.

15 Dated: **January 4, 2016**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE