

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PRINCY LAKHANPAL, M.D.,  
  
Plaintiff,  
  
v.  
  
VALLEY CONSORTIUM FOR  
MEDICAL EDUCATION, COUNTY OF  
STANISLAUS, DOCTORS MEDICAL  
CENTER OF MODESTO, INC., KATE  
KEARNS, M.D., PETER BRODERICK,  
M.D., ELIZABETH WHIPKEY-OLSON,  
M.D., AND DOES 1-10, inclusive,  
  
Defendants.

No. 1:14-cv-01315-KJM- BAM

ORDER

This matter is before the court on plaintiff’s motion to remand this case to the Superior Court of California, County of Stanislaus. Pl.’s Mot. Remand (“Pl.’s Mot.”), ECF No. 28. Defendant Valley Consortium for Medical Education opposes the motion. Def.’s Opp’n (“Opp’n”), ECF No. 35. Defendants County of Stanislaus, Kate Kearns, M.D., Peter Broderick, M.D., and Elizabeth Whipkey-Olson, M.D. have joined the opposition. ECF No. 42. The motion was submitted without argument, and the court now GRANTS the motion.

I. PROCEDURAL BACKGROUND

Plaintiff Princy Lakhanpal, M.D., filed this action in Stanislaus County Superior Court on June 5, 2014. The original complaint asserted claims for (1) fraud – intentional

1 misrepresentation; (2) discrimination – disparate treatment; (3) discrimination – violation of  
2 42 U.S.C. § 1981; (4) discrimination – violation of California Government Code § 12940(i);  
3 (5) discrimination – retaliation; (6) defamation; (7) violation of California Civil Code § 43;  
4 (8) tortious interference with prospective advantage; (9) intentional infliction of emotional  
5 distress; (10) negligence; (11) unfair business act or practice – California Business & Professions  
6 Code § 17200; (12) breach of contract; and (13) breach of implied covenant of good faith and fair  
7 dealing. On August 22, 2014, defendants removed the action to this court based on federal  
8 question jurisdiction. Notice of Removal, ECF No. 1.

9           On August 28, 2014, defendant Doctors Medical Center of Modesto (“DMC”)  
10 filed a motion to dismiss. ECF No. 7. On August 29th, defendants Valley Consortium for  
11 Medical Education (“VCME”) filed a motion to dismiss. ECF No. 12. That same day, defendants  
12 Peter Broderick, M.D., County of Stanislaus, Kate Kearns, M.D., Elizabeth Whipkey-Olson,  
13 M.D. filed a motion to dismiss. ECF No. 10.

14           On September 22, 2014, plaintiff filed a first amended complaint (“FAC”). ECF  
15 No. 27. In doing so, plaintiff withdrew all of the claims arising under or claiming relief within  
16 federal law. Specifically, plaintiff withdrew her third cause of action (discrimination under  
17 Section 1981) and eliminated references to federal law, federal jurisdiction, and federal relief for  
18 her second cause of action (discrimination – disparate treatment) and fourth cause of action  
19 (discrimination – retaliation). Twelve causes of action arising under California state law remain.  
20 Also on September 22nd, plaintiff filed the present motion for remand. ECF No. 28. On  
21 September 26, 2014, plaintiff filed her oppositions to the three motions to dismiss. ECF Nos. 29,  
22 30, 31. VCME filed an opposition to plaintiff’s motion for remand (ECF No. 35) which the  
23 remaining defendants, Peter Broderick, M.D. County of Stanislaus, Kate Kearns, M.D., and  
24 Elizabeth Whipkey-Olson, M.D., have joined. ECF No. 42.

25           In light of the new complaint, all defendants withdrew their motions to dismiss and  
26 filed new motions, which remain pending. ECF Nos. 39, 41, 43.

27 /////

28 /////

1 II. ALLEGATIONS OF THE FIRST AMENDED COMPLAINT

2 Dr. Lakhanpal was a resident physician enrolled from July 2008 through June  
3 2010 in the Stanislaus Family Medicine Resident Program (“FMRP”), predecessor to the VCME.  
4 FAC ¶ 1. VCME is the successor-in-interest to the Stanislaus FMRP, which was a partnership  
5 between Stanislaus County Health Services Agency and DMC. *Id.* ¶ 2. As successor-in-interest,  
6 VCME possesses and maintains all records associated with former residents of the FMRP, and  
7 communicates with public and private third party entities regarding the status of individual  
8 residents’ academic history and performance for purposes of determining eligibility of those  
9 individuals for licenses, board certification, the pursuit of further education, or employment. *Id.*

10 On September 18, 2008, three months into her residency at Stanislaus FMRP,  
11 Dr. Lakhanpal met with defendant Dr. Whipkey-Olson and received positive feedback. *Id.* ¶ 14.  
12 On October 8, 2008, the FMRP House Officers Promotion and Evaluation Committee (the  
13 “Committee”) met and issued a letter dated October 10, 2008, documenting Dr. Lakhanpal’s  
14 “below peer performance.” *Id.* ¶ 15. Dr. Lakhanpal did not receive this letter, but believes it was  
15 placed in her personnel file. *Id.* In mid-December 2008, Dr. Lakhanpal received two negative  
16 evaluations. *Id.* ¶ 16.

17 On or about December 16, 2008, the Committee met and noted Dr. Lakhanpal had  
18 “failed a medicine rotation.” *Id.* ¶ 19. It concluded Dr. Lakhanpal met the criteria for probation  
19 and her performance on her upcoming rotations would be a factor in determining whether  
20 probation was appropriate. *Id.* Dr. Lakhanpal had no notice of this meeting or decision until  
21 receiving her personnel file on June 30, 2010. *Id.*; *see also id.* ¶ 46.

22 On or about March 2, 2009, Dr. Lakhanpal met with FMRP Program Director  
23 Dr. Broderick. *Id.* ¶ 17. He informed Dr. Lakhanpal that her training as a PGY-1 (post-graduate  
24 year intern) would be extended by six months. As a result, she would not begin her training as a  
25 PGY-2 until December 2009. *Id.* Dr. Lakhanpal expressed her disagreement with the  
26 unsatisfactory evaluations that were submitted in December by the two attending physicians. *Id.*  
27 Dr. Broderick offered no other grounds for the extension of her training and offered no other  
28

1 explanation beyond saying the additional training should not be viewed as a negative but rather as  
2 a positive. *Id.*

3 On or about March 3, 2009, the Committee again met to review Dr. Lakhanpal's  
4 performance through her PGY-1 year. *Id.* ¶ 20. Despite Dr. Lakhanpal's having passed all  
5 rotations and receiving all satisfactory evaluations since it last met on December 16, 2008, the  
6 Committee still found that Dr. Lakhanpal had failed a major criterion as a PGY-1 resident. *Id.* In  
7 late April 2009, Dr. Lakhanpal met with Dr. Whipkey-Olsen, who was her resident advisor. *Id.*  
8 ¶ 25. The meeting was positive and at no point did Dr. Lakhanpal or Dr. Whipkey-Olsen discuss  
9 the failed rotation, any denial of academic credit, probation, the below-peer-level evaluation, or  
10 academic assistance or monitoring. *Id.*

11 On May 4, 2009, Dr. Broderick placed a letter of probation in Dr. Lakhanpal's  
12 personnel file. *Id.* ¶ 26. The letter indicated that Dr. Lakhanpal had been placed on probation  
13 from May 2009 through December 31, 2009. *Id.* Probation was the result of (1) a new  
14 Committee review and (2) her failing a second medicine rotation while on an Academic  
15 Assistance. *Id.* Plaintiff was not aware she had failed either medical rotation. *Id.*

16 On July 17, 2009, based on her satisfactory performance, Dr. Lakhanpal was  
17 offered a PGY-2 contract. *Id.* ¶ 29. Her training was to begin December 14, 2009, and would  
18 continue through December 13, 2010. *Id.* However on November 4, 2009, Dr. Broderick met  
19 with Dr. Lakhanpal to discuss his plan not to renew her contract. *Id.* ¶ 31. Dr. Lakhanpal  
20 appealed the decision to a quorum of the faculty on November 20, 2009. *Id.* ¶ 33. The quorum of  
21 the faculty sustained the non-renewal. *Id.* ¶ 34.

22 On March 27, 2010, Dr. Lakhanpal met with Dr. Broderick and requested that he  
23 reconsider the nonrenewal of her contract. *Id.* ¶ 42. Dr. Lakhanpal believes Dr. Broderick  
24 realized she was aware of the probation, denied appeal, and coordinated deception regarding her  
25 personnel file in order to justify the decision not to renew her contract and that he began to  
26 influence faculty and attending physicians to compile negative evaluations and complaints against  
27 Dr. Lakhanpal. *Id.* ¶ 43.

28 /////

1           At the time of its closure, the Stanislaus FMRP failed to provide Dr. Lakhanpal a  
2 certificate confirming her completion of PGY-1. *Id.* ¶ 51. The FMRP also failed to provide her  
3 an official transcript of her rotations/credits. *Id.* Dr. Lakhanpal received only twenty-three  
4 credits from the FMRP, but believes she is entitled to twenty-four. *Id.* ¶ 49. No reason has been  
5 provided for the loss of credit. *Id.* Since the FMRP’s closure, VCME, as successor in interest,  
6 has taken over the reporting obligations and serves as custodian of records regarding Dr.  
7 Lakhanpal’s academic record and performance as a resident. *Id.* ¶ 52. Dr. Lakhanpal believes  
8 VCME has contributed to the fraudulent accounting of her academic performance. *Id.* ¶ 54.

### 9 III. LEGAL STANDARD

10           Removal of an action based on federal question jurisdiction does not constitute a  
11 per se bar to remand. Instead, where the state law claims are not dependent on the federal claims,  
12 the plaintiff may withdraw the federal claims and seek remand. As the court pointed out in  
13 *Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 491 (9th Cir. 1995), “[t]he defendant is not  
14 obligated to remove [the originally filed state action]; rather, he has the choice either to submit to  
15 state court resolution of his claims, or to assert his right to a federal forum. If the defendant  
16 rejects the plaintiff’s offer to litigate in state court and removes the action, the plaintiff must then  
17 choose between federal claims and a state forum.” In *Baddie*, “plaintiffs . . . chose the state  
18 forum [and] dismissed their federal claims and moved for remand with all due speed after  
19 removal. There was nothing manipulative about that straight-forward tactical decision. . . .”; *see*  
20 *also Moyles v. Johnson Controls, Inc.*, 2005 WL 1561519, at \*3-4 (E.D. Cal. 2005).

21           It is well-settled in the Ninth Circuit ““that a federal court does have the power to  
22 hear claims that would not be independently removable even after the basis for removal  
23 jurisdiction is dropped from the proceedings.”” *Swett v. Schenk*, 792 F.2d 1447, 1450 (9th Cir.  
24 1986) (quoting *Watkins v. Grover*, 508 F.2d 920, 921 (9th Cir. 1974); *Murphy v. Kodz*, 351 F.2d  
25 163, 167 (9th Cir. 1965)). But a district court also has discretion to remand to state court a  
26 removed case involving pendent claims upon a proper determination that retaining jurisdiction  
27 over the case would be inappropriate. *See Price v. PSA, Inc.*, 829 F.2d 871, 876 (9th Cir. 1987);  
28 *Survival Systems v. U.S. District Court*, 825 F.2d 1416, 1419 (9th Cir. 1987). The Supreme Court

1 has indicated its disapproval of a district court's retention of jurisdiction and noted that “in the  
2 usual case” the balance of factors will weigh toward remanding any remaining pendent state  
3 claims to state court. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *see*  
4 *also Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991). The Court emphasized,  
5 in light of *Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966), the district court's decision to  
6 remand remains discretionary and is dependent upon what “will best accommodate the values of  
7 economy, convenience, fairness, and comity. . . .” *Carnegie-Mellon*, 484 U.S. at 351.

#### 8 IV. DISCUSSION

9 Plaintiff has withdrawn the federal claims from her complaint, leaving only the  
10 claims governed by California state law. She argues neither party would be prejudiced by  
11 remand, as the parties have held only one status conference, and no discovery has commenced.  
12 Opp’n at 3. She further argues it is her right to regain control of the forum that will address her  
13 claims. *Id.* at 4.

14 Defendants argue that although plaintiff has withdrawn all federal claims,  
15 jurisdiction should be analyzed on the basis of pleadings filed at the time of removal. Defs.’ Mot.  
16 at 2-3. Defendants also argue they would be prejudiced by remand, because they have already  
17 expended time and energy in filing motions to dismiss based on plaintiff’s federal claims. *Id.* at  
18 3. They assert plaintiff is engaging in bad faith tactics in eliminating her federal claims solely to  
19 return her case to state court. *Id.* at 4-5.

20 Defendants rely on *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*,  
21 159 F.3d 1209, 1212 (9th Cir. 1998) to support their contention plaintiff may not compel remand  
22 by amending her complaint to eliminate the federal question on which removal was based.  
23 *Sparta* is distinguishable from the matter before this court. In *Sparta*, the court found the federal  
24 claim was essential to the state law claim and plaintiff was improperly attempting to avoid federal  
25 jurisdiction. *Id.* In *Sparta*, the court observed, “[a] plaintiff may not avoid federal jurisdiction by  
26 omitting from the complaint federal law essential to his or her claim or by casting in state law  
27 terms a claim that can be made only under federal law.” *Id.*; *see also Rains v. Criterion Sys., Inc.*,  
28 80 F.3d 339, 344 (9th Cir. 1996). Contrary to defendants’ contention, “*Sparta* does not hold that

1 a court cannot remand a case that was properly removed even if the plaintiffs amend their  
2 complaint. . . .” *Santa Fe Drilling Co. v. Ins. Co. of State of Pa.*, C 05-4411 CW, 2006 WL  
3 13090 (N.D. Cal. Jan. 3, 2006).

4 Defendants’ argument that the court should look only to the pleadings at the time  
5 of removal to determine whether a case is suitable for remand is misplaced. They rely on case  
6 law where federal law was essential to the state law claims, or there was an independent basis for  
7 federal jurisdiction such as diversity, or addressing the perfecting of removal post-amendment.  
8 None of those issues is presented here.

9 Defendants do not dispute plaintiff timely filed her amended complaint. *See* FED.  
10 R. CIV. P. 15(a)(1)(B). In her amendment, plaintiff did not withdraw a substantial number of  
11 claims, or add any claims, and her state law claims do not rely on federal law. When considering  
12 the *Gibbs* factors of comity, judicial economy, convenience and fairness, the court finds these  
13 factors weigh in favor of plaintiff. This court has only pendent jurisdiction over the claims now  
14 before it. This case is in its early stages, and the court has played little part in any substantive  
15 adjudication in the case. The state court is equally competent to hear this case and more familiar  
16 with the law of its own forum. Defendants addressed plaintiff’s state law claims in their motions  
17 to dismiss; they may renew these substantive arguments in state court. While defendants argue  
18 they will be prejudiced by remand because they would be required to re-brief their motions,  
19 which rely on federal law, there have no new substantive issues to brief. Defendants have not  
20 demonstrated plaintiff has acted in bad faith in her request to return to state court, nor have they  
21 shown they would be prejudiced by remand.

22 V. CONCLUSION

23 For the foregoing reasons, plaintiff’s motion to remand is GRANTED and the case  
24 is remanded to the Stanislaus County Superior Court.

25 IT IS SO ORDERED.

26 DATED: November 10, 2014.

27  
28   
UNITED STATES DISTRICT JUDGE