

1 26-50; (2) negligence per se against Gottfried, Gelco, Apria and Does 26-50; (3) negligence against
2 Gottfried, Gelco, Apria and Does 26-50; and (4) negligent hiring, retention, supervision and/or
3 training against Apria and Does 26-50. Doc. 1, Ex. A.

4 In their complaint, Plaintiffs alleged that on August 28, 2014, Gottfried, then an employee of
5 Apria, drove a freightliner owned by Gelco, in the city of Caruthers, California. 4-5. Around the
6 same time and area, Jennifer Toste drove a minivan carrying Cynthia Toste and Mea Cole. Compl.
7 6. A multi-vehicle collision occurred when Gottfried allegedly failed to stop and crashed into a
8 vehicle. Compl. 5. The vehicle, in turn, collided with another vehicle which struck Plaintiffs'
9 minivan. Consequently, Plaintiffs sustained injuries, physical and mental, which require continued
10 treatment. Compl. 6-7.

11 On May 21, 2015, Gottfried, Gelco and Apria filed a timely notice of removal with this
12 Court, alleging “[t]his is a civil action . . . which may be removed to this Court by Gelco [because] it
13 arises under 49 U.S.C. § 30106.”¹ Doc. 1. Thereafter, Gelco filed a Rule 12(b)(6) motion to
14 dismiss. Doc. 3. In response, Plaintiffs voluntarily dismissed Gelco without prejudice, Doc. 10, and
15 on the same day moved to remand the case back to state court.

16 II. DISCUSSION

17 District courts “have original jurisdiction of all civil actions arising under the Constitution,
18 laws, or treaties of the United States.” 28 U.S.C. § 1331. “The removal statute authorizes a
19 defendant to remove to federal court ‘any civil action brought in a State court of which the district
20 courts of the United States have original jurisdiction.’ *Id.* § 1441(a). Consequently, only [those]

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22 ¹ Section 30106 provides, in relevant part:

23 (a) In general. An owner of a motor vehicle that rents or leases the
24 vehicle to a person (or an affiliate of the owner) shall not be liable
25 under the law of any State or political subdivision thereof, by reason of
26 being the owner of the vehicle (or an affiliate of the owner), for harm
27 to persons or property that results or arises out of the use, operation, or
28 possession of the vehicle during the period of the rental or lease, if--
29 (1) the owner (or an affiliate of the owner) is engaged in the trade or
30 business of renting or leasing motor vehicles; and
31 (2) there is no negligence or criminal wrongdoing on the part of the
32 owner (or an affiliate of the owner).
33 49 U.S.C. § 30106(a).

1 state court actions that originally could have been filed in federal court may be removed to federal
2 court by the defendant. Absent diversity of citizenship,² only cases within the district court's original
3 federal question jurisdiction may be removed from state to federal court.” *Ethridge v. Harbor House*
4 *Restaurant*, 861 F.2d 1389, 1393 (9th Cir. 1988) (quotations and citations omitted). “The burden of
5 establishing jurisdiction falls on the party invoking the removal statute, which is strictly construed
6 against removal.” *Redwood Theatres, Inc. v. Festival Enterprises, Inc.*, 908 F.2d 477, 479 (9th Cir.
7 1990) (quotations and citations omitted).

8 The dispositive issue here is whether Plaintiffs’ voluntary dismissal of Gelco without
9 prejudice warrants remanding the case back to state court. Recognizing that Gelco is no longer a
10 party in this case, Defendants nonetheless contend that the dismissal without prejudice reflects a
11 reservation to re-file claims against Gelco which would again require removal. To avoid wasting
12 “time, judicial economy, and court resources,” Defendants therefore oppose remand. Defs.’ Opp’n
13 3-4. Stated differently, Defendants aver that federal question jurisdiction exists because the need to
14 interpret and apply a federal law, namely section 30106, *may* later arise again. But federal
15 jurisdiction cannot be premised on speculation about what claims may be brought.

16 Even if Gelco was still a party in this case, the Court would be hard pressed to find federal
17 jurisdiction under the circumstances. “The presence or absence of federal-question jurisdiction is
18 governed by the well-pleaded complaint rule, which provides that federal jurisdiction exists only
19 when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. The
20 rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive
21 reliance on state law.” *Id.* at 1394. But “under the artful pleading rule a plaintiff may not defeat
22 removal by omitting to plead necessary federal questions in a complaint. A state-created cause of
23 action can be deemed to arise under federal law (1) where federal law completely preempts state
24 law; (2) where the claim is necessarily federal in character; or (3) where the right to relief depends
25 on the resolution of a substantial, disputed federal question[.]” *ARCO Envtl. Remediation, L.L.C. v.*
26 *Dep’t of Health & Envtl. Quality*, 213 F.3d 1108, 1114 (9th Cir. 2000) (quotations and internal

27 ² Diversity jurisdiction is not present because Plaintiffs are California residents and Defendants are
28 either California residents or authorized to conduct business and have had headquarters located in
California. Compl. 2-3.

1 citations omitted). Defendants contend federal question jurisdiction is supported by complete
2 preemption and that Plaintiffs' right to relief depends on the resolution of section 30106. Defs.'
3 Opp'n 2-3.

4 As to complete preemption, Defendants provide no legal authority for the position that
5 section 30106 completely supplants any state law claim. The two cases on which Defendants rely,
6 *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1 (1983) and *Schroeder v. Trans*
7 *World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983),³ concern the Employee Retirement Income
8 Security Act of 1974 (ERISA)⁴ and the Railway Labor Act, respectively. Neither case addressed
9 the preemptive effect of section 30106. Defendants provide no support for the self-serving statement
10 that section 30106 "completely preempts the subject matter[.]" Defs.' Opp'n 2.

11 As to whether Plaintiffs' right to relief depends on a resolution of section 30106, the inquiry
12 is whether that section "is a necessary element of one of the well-pleaded state claims." *ARCO*
13 *Env'tl. Remediation, L.L.C.*, 213 F.3d at 1116 (quotations and citations omitted). The answer: it is
14 not. The three causes of action against Gelco—motor vehicle negligence, negligence per se and
15 negligence—are grounded in state law and not predicated on section 30106. Plainly read, that
16 section limits Gelco's liability as owner of the freightliner if certain conditions are met. It may be a
17 defense to Plaintiffs' claims and "a case may *not* be removed to federal court on the basis of a
18 federal defense[.]" *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987).

19 Thus, even if Gelco had not been dismissed, Defendants fail to meet their burden of
20 establishing federal jurisdiction. The Court would have been unconvinced that federal question
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25 ³ *Schroeder* was overruled by *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241 (9th Cir. 2009).
26 "We also hold that to the extent *Schroeder* ruled that federal question jurisdiction always or
27 automatically exists whenever a removal petition contains additional facts evidencing [t]he
28 application of [the RLA] and the necessity of its interpretation, that holding is also effectively
overruled[.]" *Id.* at 1246.

⁴ "Examples [of complete preemption] include Section 502 of the Employee Retirement Income
Security Act of 1974 (ERISA), Section 301 of the Labor Management Relations Act (LMRA) and
the usury provisions of the National Bank Act." *Dennis v. Hart*, 724 F.3d 1249, 1254 (9th Cir.
2013).

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jurisdiction exists.

III. CONCLUSION

For the foregoing reasons, Plaintiffs’ “Motion to Remand to State Court” is hereby GRANTED.

IT IS SO ORDERED.

Dated: August 7, 2015

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE