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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MEGAN REGER, et al.,	)	Case No. 2:11-CV-03301-JAM-DAD
	)	
Plaintiffs,	)	<u>ORDER GRANTING PLAINTIFFS'</u>
	)	<u>MOTION TO REMAND</u>
v.	)	
	)	
MOUNTAIN LIFEFLIGHT INC., et	)	
al.,	)	
	)	
Defendants.	)	
	)	
	)	

This matter is before the Court on Plaintiffs Megan Reger's, individually and as Successor in Interest to Clinton Reger, and Kevin Eikleberry's as Guardian Ad Litem for Evan Reger and Matthew Reger (collectively "Plaintiffs") two Motions to Remand to State Court for Lack of Jurisdiction (Doc. ## 17, 32).<sup>1</sup> Only Defendant American Eurocopter Corporation ("AEC") opposes both motions (Doc. ## 29, 35).

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<sup>1</sup>This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled on April 11, 2012.

1 I. BACKGROUND

2 Plaintiffs' allegations concern a helicopter crash on November  
3 14, 2009 which resulted in Clinton Reger's death. The helicopter  
4 was allegedly owned and operated by Defendant Mountain Lifeflight  
5 ("MLF"), a California corporation. Plaintiffs assert six causes of  
6 action based on negligence and strict liability against the various  
7 defendants seeking to recover for Clinton Reger's death. AEC  
8 removed this action (Doc. #1) from the Sacramento County Superior  
9 Court, State of California, claiming federal question and federal  
10 diversity jurisdiction. Plaintiffs now seek to remand the action  
11 to state court, claiming that removal by the defendants was not  
12 authorized and the removal process was defective.

13  
14 II. OPINION

15 A. Legal Standard for Motion to Remand

16 As this is a motion to remand pursuant to 28 U.S.C. § 1447(c),  
17 the issue to be decided is the Court's subject matter jurisdiction  
18 or lack thereof. See 28 U.S.C. § 1447(c) ("If at any time before  
19 final judgment it appears that the district court lacks subject  
20 matter jurisdiction, the case shall be remanded."). The court must  
21 remand an action sua sponte if it determines that it lacks subject  
22 matter jurisdiction. See Kelton Arms Condominium Owners Ass'n v.  
23 Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir.2003) ("[W]e have  
24 held that the district court must remand if it lacks  
25 jurisdiction.") (citing Sparta Surgical Corp. v. Nat'l Ass'n Sec.

1 Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir.1998)). The removal  
2 statute explains when removal is proper:

3 Except as otherwise expressly provided by Act of  
4 Congress, any civil action brought in a State court of  
5 original jurisdiction, may be removed by the defendant  
6 or the defendants, to the district court of the United  
States for the district and division embracing the  
place where such action is pending.

7 28 .S.C. § 1441(a).

8 The Ninth Circuit "strictly construe[s] the removal statute  
9 against removal jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564,  
10 566 (9th Cir.1992) (citing Boggs v. Lewis, 863 F.2d 662, 663 (9th  
11 Cir.1988); Takeda v. Northwestern National Life Insurance Co., 765  
12 F.2d 815, 818 (9th Cir.1985)). Thus, "[f]ederal jurisdiction must  
13 be rejected if there is any doubt as to the right of removal in the  
14 first instance." Id. (citing Libhart v. Santa Monica Dairy Co.,  
15 592 F.2d 1062, 1064 (9th Cir.1979)). "The 'strong presumption'  
16 against removal jurisdiction means that the defendant always has  
17 the burden of establishing that removal is proper." Id. (citing  
18 Nishimoto v. Federman-Bachrach & Associates, 903 F.2d 709, 712 n. 3  
19 (9th Cir.1990); Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195  
20 (9th Cir.1988)).

21 B. Diversity Jurisdiction

22 AEC opposes remand on the ground that defendant MLF, the only  
23 defendant that is a citizen of California, is a fraudulently joined  
24 or "sham" defendant. AEC contends that the only claim against MLF,  
25 as Clinton Reger's employer, is through California's worker  
26 compensation system, making Plaintiffs' cause of action against MLF  
27 invalid. Plaintiffs respond that Clinton Reger was employed by  
28 South Lassen EMS doing business as Plumas EMS, and that Clinton

1 Reger was not employed by MLF at the time of the crash. Therefore  
2 MLF is a proper defendant and complete diversity does not exist.

3 "In order for diversity jurisdiction to be present, there must  
4 be complete diversity such that each of the plaintiffs [is] a  
5 citizen of a different state than each of the defendants." Fisher  
6 v. Paul Revere Ins. Group, 55 F. App'x 412, 413 (9th Cir. 2002)  
7 (internal quotations omitted). "If a plaintiff fails to state a  
8 cause of action against a resident defendant, and the failure is  
9 obvious according to the well-settled rules of the state, the  
10 joinder is fraudulent and 'the defendant's presence in the lawsuit  
11 is ignored for purposes of determining diversity.'" United  
12 Computer Sys. v. AT&T Info. Sys., 298 F.3d 756, 761 (9th Cir. 2002)  
13 (quoting Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th  
14 Cir. 2001)). "The standard is not whether [a plaintiff] will  
15 actually or even probably prevail on the merits, but whether there  
16 is any possibility that [she] may do so." Cont'l Ins. Co. v. Foss  
17 Mar. Co., No. C 02-3936 MJJ, 2002 U.S. Dist. LEXIS 20523, at \*4  
18 (N.D. Cal. Oct. 23, 2002).

19 Plaintiffs produced evidence that MLF was not Clinton Reger's  
20 employer at the time of the crash. Clinton Reger's W-2 lists  
21 Plumas EMS as his employer. (Fleshman's Decl., Doc. #19, Ex. E.)  
22 Plumas EMS is a fictitious business name registered to South Lassen  
23 EMS, Inc. (Fleshman's Decl., Ex. D.) Further, the state worker  
24 compensation proceedings involved Plumas EMS, not MLF. (Fleshman's  
25 Decl., Exs. G-I.) AEC responds that the W-2 is not necessarily  
26 dispositive of the employment issue, and that Plaintiffs should  
27 have presented evidence to satisfy a common law employment  
28 analysis.

1 To support its argument, AEC relies on news articles, an  
2 obituary, and the answer filed by MLF in an attempt to show that  
3 Clinton Reger was actually employed by MLF, not Plumas EMS.  
4 Plaintiffs correctly argue that these items are not evidence and/or  
5 they are inadmissible hearsay. AEC further argues, without  
6 citation to legal authority, that since Lassen EMS and MLF share an  
7 address, they should be considered the same entity. Left with only  
8 AEC's unsupported argument and Plaintiffs' contrary documentary  
9 evidence, the Court finds that AEC has not met its burden of  
10 showing that MLF was fraudulently joined. Accordingly, MLF's  
11 California citizenship precludes a finding of subject matter  
12 jurisdiction based on diversity of state citizenship. 28 U.S.C. §  
13 1332(a).

#### 14 C. Federal Preemption

15 AEC also argues that removal jurisdiction exists because  
16 Plaintiffs' negligence and strict liability claims are preempted by  
17 Federal Aviation Regulations ("FARs"). Plaintiffs respond that  
18 their claims are not preempted and are therefore not the proper  
19 basis for removal.

20 "[A] case may not be removed to federal court on the basis of  
21 a federal defense, including the defense of [federal] pre-emption.  
22 . . ." Caterpillar Inc. v. Williams, 482 U.S. 386, 393 (1987). An  
23 exception to this rule is that if an area of state law is  
24 completely preempted by federal law, then the cause of action is  
25 considered as arising under federal law for removal purposes. Id.

26 In the area of aviation safety, Congress expressly preserved  
27 state law tort causes of action. Martin ex rel. Heckman v. Midwest  
28 Exp. Holdings, Inc., 555 F.3d 806, 808 (9th Cir. 2009) (citing 49

1 U.S.C. § 40120(c) (“[a] remedy under this part is in addition to  
2 any other remedies provided by law.”)). The Ninth Circuit  
3 interprets this provision to mean that state law causes of action  
4 are only preempted when the FARs in a certain area constitute  
5 pervasive regulation. Id. at 811. In the tort context, this type  
6 of preemption means that the state law standard of care is  
7 preempted in those areas that are subject to pervasive federal  
8 regulation. See id. (“when the [Federal Aviation Administration]  
9 issues ‘pervasive regulations’ in an area . . . the [FARs]  
10 preempt[] all state law claims in that area. In areas without  
11 pervasive regulations or other grounds for preemption, the state  
12 standard of care remains applicable.”)

13 In this case, despite AEC’s argument to the contrary, it is  
14 clear that AEC offers preemption as a federal defense to state law  
15 claims. Martin specifically held that Congress did not preempt the  
16 entire field of aircraft regulation. Id. Where Congress has not  
17 preempted the entire field, federal preemption is limited to a  
18 federal defense and cannot be the basis for removal. See Metro.  
19 Life Ins. Co. v. Taylor, 481 U.S. 58, 63-64 (1987) (complete  
20 preemption, which is grounds for removal, exists only in areas that  
21 are so completely preempted that any claim brought is necessarily  
22 federal in character). According to Martin, however, state law  
23 claims brought in the area of aircraft safety are not necessarily  
24 federal in nature. Martin, 555 F.3d at 811. Under Martin, the  
25 FARs, if sufficiently pervasive, only preempt the state law  
26 standard of care for Plaintiffs’ claims, but not the state law  
27 claims themselves. Id.

28 It is clear under Martin that the Ninth Circuit does not

1 recognize field preemption, which would create federal subject  
2 matter jurisdiction, for all aviation related state law tort  
3 claims. In the absence of complete preemption, AEC merely offers a  
4 federal defense based on preemption to Plaintiffs' state law  
5 claims. See Taylor, 481 U.S. at 63. Thus, federal question  
6 jurisdiction for removal purposes cannot be based on preemption in  
7 this instance. Caterpillar, 482 U.S. at 393.

8 D. Procedural Propriety of Removal

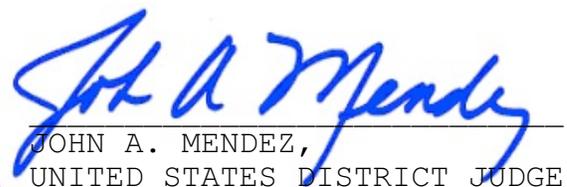
9 Plaintiffs also argue that the removal procedure was defective  
10 because not all Defendants consent to removal. Defendants respond  
11 that the defect has since been cured by MLF's consent to removal.  
12 Removing Defendants may cure defects in a notice of removal prior  
13 to the entry of judgment, rendering "remand on procedural grounds  
14 an empty formality." Parrino v. FHP, Inc., 146 F.3d 699, 703 (9th  
15 Cir. 1998) (superseded on other grounds). Accordingly, the Court  
16 declines to remand this case on procedural grounds.

17 III. ORDER

18 For the reasons discussed above, the Court GRANTS Plaintiffs'  
19 Motion to Remand on the ground that the Court lacks subject matter  
20 jurisdiction. This action is hereby remanded back to the Superior  
21 Court of California, Sacramento. The Court orders the clerk to  
22 close this case.

23 IT IS SO ORDERED.

24 Dated: April 16, 2012

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26 \_\_\_\_\_  
27 JOHN A. MENDEZ,  
28 UNITED STATES DISTRICT JUDGE