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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AMANDA JACQUELINE MORIARTY,

No. C 10-0582 MHP

Plaintiff,

**MEMORANDUM & ORDER**

v.

**Re: Plaintiff's Motion to Remand**

ALAMEDA COUNTY, et al.,

Defendants.

Plaintiff Amanda Moriarty brought suit in the Superior Court of California for the County of Alameda against various defendants. Defendant Santa Clara County removed the action to this court on February 10, 2010. Now before the court is plaintiff's motion to remand. The court has considered the parties' arguments fully, and for the reasons set forth below, rules as follows.

**BACKGROUND**

Plaintiff's allegations are not in dispute. On the evening of June 20, 2008, plaintiff sought assistance from Santa Clara County's Emergency Psychiatric Services facility ("EPS") because she was hearing voices in her head. Plaintiff was told to go home and no medical services were provided.

The following day, plaintiff came to the belief that God was instructing her to kill herself. She crashed her car off the side of the highway and was then taken by ambulance to Eden Medical Center. Plaintiff claims that Eden, while treating her, failed to diagnose an unstable fracture of her cervical spine. Upon release from Eden, because she claimed her automobile accident was a suicide

1 attempt, plaintiff was involuntarily admitted to John George Psychiatric Pavilion at the Alameda  
2 County Medical Center. There, after she attempted to throw herself out a window, plaintiff was  
3 found face-down on the floor of her room with a bloody nose and head, and no ability to move her  
4 legs or hands. Plaintiff was immediately taken back to the Eden Medical Center. The treatment was  
5 unsuccessful and she is now a quadriplegic. She began receiving rehabilitative treatment for her  
6 quadriplegia approximately one week after her June 20, 2008 attempt to obtain treatment at EPS.

7 Plaintiff filed her original complaint in state court on March 12, 2009, asserting state medical  
8 malpractice claims against all three hospitals, their respective operators, the treating physician who  
9 failed to diagnose her spine fracture, and his medical group. On January 21, 2010, she amended her  
10 complaint to assert a federal claim under the Emergency Medical Treatment and Active Labor Act  
11 (“EMTALA”), 42 U.S.C. section 1395dd, and a parallel state law claim under California Health and  
12 Safety Code section 1317. These new claims were asserted against Santa Clara County alone, and  
13 seek relief for injuries plaintiff sustained as a result of the County’s failure to provide services when  
14 she sought treatment at EPS the evening prior to her car accident.

15 Santa Clara County filed a notice of removal on February 10, 2010, claiming federal  
16 jurisdiction under 28 U.S.C. section 1331 for the EMTALA claim, and supplemental jurisdiction  
17 under section 1367 for the remaining claims. Docket No. 1 (Notice of Removal) ¶ 3. There is no  
18 dispute that all defendants did not join the notice of removal within thirty days of removal.

19  
20 LEGAL STANDARD

21 District courts possess original jurisdiction over all civil actions “arising under the  
22 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “[A]ny civil action brought  
23 in a State court of which the district courts of the United States have original jurisdiction, may be  
24 removed by the defendant or defendants, to the district court of the United States.” *Id.* § 1441(a).

25 The removal statute is strictly construed, and the court must reject federal jurisdiction if there  
26 is any doubt as to whether removal was proper. *Prize Frize, Inc. v. Matrix (U.S.), Inc.*, 167 F.3d  
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1 1261, 1265 (9th Cir. 1999). The removing party bears the burden of establishing that removal is  
2 proper. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

3  
4 DISCUSSION

5 Generally, a defendant seeking removal must obtain joinder from all co-defendants that have  
6 been served. *Proctor v. Vishay Intertechnology, Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009). Santa  
7 Clara County contends that the presence of a removable claim which is separate and independent  
8 from the non-removable claims requires unanimity of joinder only from those defendants that had  
9 the removable claim asserted against them. Thus, it claims that since the EMTALA claim—asserted  
10 only against Santa Clara County—is separate and independent, no joinder is required.<sup>1</sup> The court  
11 first addresses the threshold issue of whether plaintiff’s EMTALA claim is separate and independent  
12 from her other claims.

13 A claim is separate and independent from other claims if it involves an actionable wrong  
14 separate from the other claims, and if complete relief may be afforded as to it without reference to  
15 the other claims and without the presence of the parties to the other claims. *Emrich*, 846 F.2d at  
16 1197 (citing *American Fire & Cas. Co. v. Finn*, 341 U.S. 6 (1951)) ““Where there is a single wrong  
17 to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no  
18 separate and independent claim or cause of action under § 1441(c).”” *Id.* (quoting *American Fire &*  
19 *Cas. Co.*, 341 U.S. at 14).

20 Santa Clara County claims that the EMTALA claim relates simply to the County’s alleged  
21 failure to provide a medical screening, whereas the remaining causes of action pertain to substandard  
22 care, treatment or diagnosis. Plaintiff, however, specifically claims that as a direct and proximate  
23 result of Santa Clara County’s acts or omissions, her “psychiatric condition went undiagnosed and  
24 untreated and resulted in an automobile accident that left her a quadriplegic.” Docket No. 1 (Notice  
25 of Removal), Exh. B (First Amended Complaint) ¶¶ 18 & 23.

26 Under the single wrong test of *Emrich*, plaintiff’s EMTALA claim cannot be characterized as  
27 sufficiently distinct from her state law claims. Specifically, complete relief under EMTALA cannot  
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1 be afforded without reference to plaintiff’s other claims and without the presence of the remaining  
2 defendants in this action. Under EMTALA, a individual who “suffers personal harm as a direct  
3 result of the participating hospital’s violation . . . may . . . obtain those damages available for  
4 personal injury under the law of the State in which the hospital is located.” 42 U.S.C.  
5 § 1395dd(d)(2)(A). Because the measure of damages under EMTALA may overlap with the  
6 measure of damages for negligence and/or malpractice under California law, EMTALA is not  
7 wholly independent of the state causes of action.

8         Moreover, plaintiff is complaining of a single wrong—her quadriplegia—that arises from an  
9 interlocked series of transactions. It is not clear whether the cause of plaintiff’s harm can be  
10 attributed to the denial of care by Santa Clara County, improper diagnosis at Eden Medical Center,  
11 improper supervision at Alameda County, negligent surgery upon returning to Eden Medical Center,  
12 or some combination thereof. The complaint simply seeks damages for plaintiff’s injury, which  
13 manifested after four consecutive administrations of care (or lack thereof). To the extent Santa Clara  
14 County is liable for compensatory damages under EMTALA, the fact-finder would need to  
15 determine whether the causal chain was broken by intervening forces as defendants have asserted  
16 equitable indemnification claims against each other. This too would require the presence of the  
17 other defendants.

18         *Mayo v. Christian Hosp. Northeast-Northwest*, 962 F. Supp. 1203, 1206 (E.D. Mo. 1997), is  
19 instructive. Plaintiff there alleged “that her husband’s death was the direct result of the combined  
20 negligence of his health care providers and the health plan(s) administrators” and sought  
21 compensation from all the defendants. *Id.* The court found that “Mayo alleges a series of events in  
22 which the health care providers’ malpractice, exacerbated by the negligent decisions of the health  
23 care plan administrators regarding referrals and availability of treatments, contributed to her  
24 husband’s death,” and held that “the singularity of the harm suffered by plaintiff, and not the various  
25 theories of recoveries used to address or compensate for that harm” determines whether the claims  
26 are separate and independent. *Id.* The situation here is similar: plaintiff alleges that her  
27 quadriplegia resulted from the combined acts of the defendants; a series of temporally proximate  
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1 events led to her harm; and there exists a singularity of harm. This demonstrates that the EMTALA  
2 claim is not separate and independent from the other state-law theories of recovery.

3 This conclusion is buttressed by the filings of other defendants in this action. Defendants  
4 Michael Gynn and the Northern California Trauma Medical Group both argue that the “relief sought  
5 by plaintiff in both her state and federal claims arise from a single wrong that is based upon a  
6 common nucleus of operative facts.” Docket No. 26 (Opposition) at 2. Likewise, the Sutter Health  
7 and Eden Medical Center defendants argue that plaintiff has one injury, quadriplegia, that is part of  
8 the same case or controversy for which plaintiff seeks damages. Docket No. 27 (Opposition) at 2-3.  
9 The latter defendants go so far as to argue that plaintiff is simply asserting “separate theories of  
10 liability against the multiple defendants.” *Id.* at 3.

11 Santa Clara County’s reliance on *Riggs v. Plaid Pantries, Inc.*, 233 F. Supp. 2d 1260,  
12 1266-67 (D. Or. 2001) is unpersuasive. There, plaintiff was allegedly raped by her supervisor.  
13 When she returned to work several weeks after the incident she had difficulty with her new  
14 supervisors and was eventually terminated. She sued her employer for retaliation under federal law,  
15 and asserted several state law claims against both her employer and the individual supervisor. The  
16 employer removed without joining the individual supervisor defendant. The court held that  
17 plaintiff’s federal claim for retaliation under Title VII was separate and independent of the other  
18 claims because the “retaliation claim stands apart and does not require plaintiff to establish [the  
19 supervisor’s] actions as alleged.” *Id.* Since the retaliation claim was not contingent on the other  
20 claims—it involved facts occurring after the initial harassment and assault—the court found the facts  
21 which formed the basis of the retaliation claim to be different in kind and different in time. As  
22 discussed above, EMTALA damages can be directly dependent on the state law claims. Indeed, in  
23 direct contrast to *Riggs*, consequential damages under EMTALA will require plaintiff to establish  
24 liability under her state law claims. Moreover, unlike *Riggs*, the transactions here occurred over the  
25 course of a few days, not a few weeks, which demonstrates that the facts are not different in time.

26 Finally, the County’s reliance on *Cooper v. Gulf Breeze Hosp.*, 839 F. Supp. 1538,1542-43  
27 (N.D. Fla. 1993), and *Jackson v. East Bay Hosp.*, 980 F. Supp. 1341, 1348 (N.D. Cal. 1997) (Patel,  
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1 J.) is inapposite because neither of those cases discussed “separate and independent” under section  
2 1441(c). Accordingly, plaintiff’s EMTALA claim is not separate and independent from the other  
3 claims. Therefore, unanimity of joinder was required, the removal was defective and this action  
4 must be remanded. <sup>2</sup>

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6 CONCLUSION

7 Plaintiff’s motion to remand is GRANTED. This action is remanded to the Superior Court of  
8 California for the County of Alameda. The Clerk of Court shall transmit forthwith a certified copy  
9 of this order to the Clerk of the Alameda County Superior Court.

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11 IT IS SO ORDERED.

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13 Dated: April 30, 2010

  
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MARILYN HALL PATEL  
United States District Court Judge  
Northern District of California

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**ENDNOTES**

1. Defendant in its opposition asserts the “separate and independent” basis for removal without the need for joinder of the other defendants. However, nowhere in its notice of removal does defendant mention 28 U.S.C. 1441(c) or “separate and independent” as the grounds for removal and as the explanation for the failure to join all defendants. This alone renders the removal defective and subject to remand as plaintiff noted in her reply.

2. Remand does not deprive plaintiff of her EMTALA claim since state courts have concurrent jurisdiction under the statute to enforce the provisions of 42 U.S.C. section 1395dd(d)(2)(A). H.R. Rep. No.99-241, at 7, (1986) *as reprinted in* 1986 U.S.C.C.A.N. 726, 729; *Sorrells v. Babcock, M.D.*, 733 F. Supp. 1189, 1192 (N.D. Ill. 1990); *Bryant v. Riddle Memorial Hosp.*, 689 F. Supp. 490, 493 (E.D. Pa. 1988).