

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  
28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIAJAMES BRINDLE, REBECCA GREGG,  
and DIANA GUTHRIE,

Plaintiffs,

v.

MCKESSON CORPORATION, et al.,

Defendants.

No. C 12-05970 WHA

**ORDER REQUESTING  
ADDITIONAL BRIEFING**

---

In this pharmaceutical product liability action, plaintiffs move to remand back to state court. Defendants oppose on federal question and supplemental jurisdiction grounds. In *PLIVA, Inc. v. Mensing*, 131 S.Ct. 2567 (2011), the Supreme Court held that state failure-to-warn claims are preempted by federal law. While “it is now settled law that a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption,” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (citations omitted) (emphasis in original), there is an “independent corollary.” *See id.* (citations omitted). “On occasion, the Court has concluded that the pre-emptive force of a statute is so ‘extraordinary’ that it ‘converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” *Id.* (quoting *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987)). Then, “[o]nce an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim,

1 and therefore arises under federal law.” *Id.* (quoting *Franchise Tax Bd. of State of Cal. v.*  
2 *Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 24 (1983)).

3 This order requests additional briefing on this issue. Specifically, the parties must  
4 address the following three questions:

5 *First*, after *Mensing*, are plaintiffs’ state failure-to-warn claims here “completely  
6 pre-empted” such that federal-question jurisdiction is proper?

7 *Second*, in the event that federal question jurisdiction is proper, has Congress explicitly  
8 authorized a private right of action regarding the labeling of manufacturers of generic drugs or  
9 alternatively, has one been implied by law?

10 *Third*, what effect (if any) will the Supreme Court’s decision in *Mutual Pharm. Co.,*  
11 *Inc. v. Bartlett*, 133 S.Ct. 694 (2012), *granting cert. to Bartlett v. Mutual Pharm. Co., Inc.*,  
12 678 F.3d 30 (1st Cir. 2012), have on this action?

13 All defendants are to file one joint brief of no more than ten pages by **NOON ON**  
14 **MARCH 25, 2013**. All plaintiffs are to file one joint brief of no more than ten pages by **NOON**  
15 **ON MARCH 25, 2013**.

16  
17 **IT IS SO ORDERED.**

18  
19 Dated: March 19, 2013.

20   
21 \_\_\_\_\_  
22 WILLIAM ALSUP  
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28