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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEANNIE ALDERSON, *et al.*,
Plaintiffs,
v.
UNITED STATES OF AMERICA, *et al.*,
Defendants.

Case No. [14-cv-03564-SI](#)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

Re: Dkt. No. 36

Now before the Court is defendant Susman's motion to dismiss the complaint on statute of limitations grounds. After careful consideration of the parties' briefing and the arguments of counsel at the hearing, the Court DENIES defendant's motion.

The Court finds that it is appropriate to resolve the issue of the timeliness of plaintiffs' claims on a fuller factual record at summary judgment rather than on the pleadings. Plaintiffs assert, *inter alia*, that when defendant Susman operated on plaintiff Jeannie Alderson in May 2012, he informed plaintiffs that the foreign object removed from her body was a wound VAC sponge. Plaintiffs claim that as a result, they believed that Jeannie Alderson's injury was caused by the Redwood Coast Medical Services nurses who performed home dressing changes on plaintiff with the wound VAC. Plaintiffs assert that they did not have reason to believe that they could bring a claim against Susman until after their federal tort claim was denied in 2014 due to questions regarding the provenance of the sponge, including whether the sponge was actually a surgical sponge and not a wound VAC sponge.

At the hearing, defense counsel argued, *inter alia*, that plaintiffs were on notice regarding the factual basis for their claims against Susman as early as 2012 because the pathology report stated that the sponge may have been a surgical sponge. These arguments raise factual questions

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that are not suitable for resolution at this stage of litigation. The Court also notes that other defendants have asserted the statute of limitations as a defense in their answers, and thus that this issue will be litigated in any event. Accordingly, the Court DENIES defendant Susman's motion without prejudice to renewal on a fuller factual record.

IT IS SO ORDERED.

Dated: May 20, 2015



SUSAN ILLSTON
United States District Judge