

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JAIME DEGUZMAN, et al.,

4 Plaintiffs,

5 v.

6 CRANE CO., et al.,

7 Defendants.

Case No. 17-cv-02228-PJH

**ORDER DENYING PLAINTIFFS'
MOTION TO REMAND**

Re: Dkt. No. 88

8
9 Plaintiffs' motion to remand came on for hearing before this court on May 31,
10 2017. Plaintiffs appeared through their counsel, Mahzad Hite. Defendant Crane Co.
11 ("Crane") appeared through its counsel, Matthew G. Ball. The appearances of other
12 defendants are noted in the court's minute order. See Dkt. 128. Having read the papers
13 filed by the parties and carefully considered their arguments and the relevant legal
14 authority, and good cause appearing, the court hereby DENIES the motion to remand, for
15 the reasons stated on the record at the hearing.

16 A civil action that "is against or directed to . . . any [United States] officer (or any
17 person acting under that officer) . . . for or relating to any act under color of such office" is
18 removable to federal court. 28 U.S.C. § 1442(a)(1). A party seeking removal under the
19 federal officer removal statute must demonstrate that "[1] it is a 'person' within the
20 meaning of the statute; [2] there is a causal nexus between its actions, taken pursuant to
21 a federal officer's directions, and plaintiff's claims; and [3] it can assert a 'colorable'
22 federal defense." Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1251 (9th Cir. 2006)
23 (citations omitted); see also Leite v. Crane Co., 749 F.3d 1117, 1122–24 (9th Cir. 2014).

24 To establish the third element, Crane relies on the government contractor defense,
25 which applies if "(1) the United States approved reasonably precise specifications; (2) the
26 equipment conformed to those specifications; and (3) the supplier warned the United
27 States about the dangers in the use of the equipment that were known to the supplier but
28 not to the United States." Boyle v. United Techs. Corp., 487 U.S. 500, 512 (1988).

1 There is no dispute that Crane is a “person” under the removal statute. See Fung
2 v. Abex Corp., 816 F. Supp. 569, 572 (N.D. Cal. 1992). The notice of removal alleges a
3 causal nexus between plaintiffs’ claims and the actions allegedly taken at the behest of a
4 federal officer. See Notice of Removal ¶¶ 9–14. Specifically, Crane submits a number of
5 declarations averring that it acted under the direction of the Navy in the design and
6 manufacture of the allegedly-defective valves, which the Navy supervised by mandating
7 conformity with detailed specifications, which required asbestos.

8 Thus, as plaintiffs conceded at the hearing, Crane has a colorable federal defense
9 to plaintiffs’ design defect claim. “It is well settled that if one claim cognizable under
10 Section 1442 is present, the entire action is removed, regardless of the relationship
11 between the Section 1442 claim and the non-removable claims.” Nat’l Audubon Soc. v.
12 Dep’t of Water & Power of City of Los Angeles, 496 F. Supp. 499, 509 (E.D. Cal. 1980)
13 (citing Murphy v. Kodz, 351 F.2d 163 (9th Cir. 1965)). Thus, removal of the entire case
14 was proper pursuant to 28 U.S.C. § 1442(a)(1).

15 Plaintiffs’ representation, made for the first time in its reply brief, that “Plaintiffs will
16 waive their design-defect claims against Crane so that this case can be remanded” does
17 not change the analysis. See Reply at 8. The design defect theory against Crane is
18 pleaded in the complaint, and Crane has asserted a colorable federal defense to that
19 claim to support removal. If plaintiffs choose to amend their complaint and/or stipulate to
20 dismissal of claims against Crane, the court will reconsider the possibility of remand upon
21 plaintiffs’ motion. However, as a general matter, “jurisdiction must be analyzed on the
22 basis of the pleadings filed at the time of removal without reference to subsequent
23 amendments.” Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209,
24 1213 (9th Cir. 1998).

25 **IT IS SO ORDERED.**

26 Dated: May 31, 2017



PHYLLIS J. HAMILTON
United States District Judge