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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERICK B. NIMTZ,)	Civil No. 08cv1294 L(MDD)
Plaintiff,)	ORDER REMANDING THIS ACTION TO THE STATE COURT
v.)	
DANIEL CEPIN, M.D., <i>et al.</i> ,)	
Defendants.)	
_____)	

This action was removed from the Superior Court for the State of California, County of San Diego, on July 18, 2008, by defendant Guidant Corporation. Guidant based the removal on the Court’s diversity jurisdiction arguing that defendant Daniel Cepin, M.D. was improperly joined to destroy diversity of citizenship. Therefore, Guidant argued Cepin’s citizenship should be disregarded, and the medical malpractice claim against him should be severed and remanded to state court.

The Court dismissed with prejudice defendant Guidant on June 1, 2011. As a result, the sole remaining defendant is Dr. Cepin, who is a citizen and resident of California, as is plaintiff, and the claim against Dr. Cepin is based entirely on state law.

The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of N.Y.*, 790 F.2d 769, 774 (9th Cir. 1986). It possesses only that power authorized by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is

1 constitutionally required to raise issues related to federal subject matter jurisdiction, and may do
2 so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus.*
3 *Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

4 Because plaintiff's sole remaining claim is for medical malpractice under state law and
5 the parties are both citizens of the state of California, the Court lacks subject matter jurisdiction
6 over this action. Accordingly, **IT IS ORDERED** remanding this action, Case No. 37-2008-
7 00071342-CU-MM-SC, to the Superior Court for the State of California, County of San Diego,.

8 **IT IS SO ORDERED.**

9 DATED: July 25, 2011

10 
11 M. James Lorenz
United States District Court Judge

12 COPY TO:

13 HON. MITCHELL D. DEMBIN
14 UNITED STATES MAGISTRATE JUDGE

15 ALL PARTIES/COUNSEL
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