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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARTA E. SHEEHAN, and  
TIMOTHY J. SHEEHAN,  
  
Plaintiffs,  
  
vs.  
  
UNITED STATES OF AMERICA,  
I-FLOW CORPORATION,  
  
Defendants.

CASE NO. 08-CV-1658-IEG (POR)

**ORDER:**

**(1) DENYING PLAINTIFF’S  
MOTION TO REMAND (Doc. No.  
39); and**

**(2) DISMISSING THE ACTION  
WITHOUT PREJUDICE.**

Presently before the Court is Plaintiffs Marta E. Sheehan and Timothy J. Sheehan’s (“Plaintiffs”) motion to remand to state court. (Doc. No. 39.) Defendant I-Flow Corporation (“I-Flow”) filed a notice of non-opposition to the motion.

The Court finds the matter appropriate for disposition without oral argument pursuant to Local Rule 71.1(b). For the reasons stated herein the Court denies the motion to remand. However, the Court declines to exercise supplemental jurisdiction over Plaintiffs’ state law claims and dismisses the case without prejudice to its being re-filed in state court.

**BACKGROUND**

This case involves an injury sustained by Marta E. Sheehan at the navel hospital in Camp Pendelton in California. On September 10, 2008, Plaintiff filed a Complaint in this court against the United States of America (“United States”) pursuant to the Federal Tort Claims Act. (Doc.

1 No. 1.) Plaintiff alleged agents and/or employees of the hospital negligently performed a  
2 bunionectomy on her foot.

3 On May 7, 2009, Plaintiff filed a First Amended Complaint which added I-Flow  
4 Corporation as a defendant and added Timothy J. Sheehan as a plaintiff with respect to a loss of  
5 consortium claim against I-Flow only. (Doc. No. 20.) In addition, the First Amended Complaint  
6 added state law causes of action for strict liability, negligence, breach of implied warranty, and  
7 breach of express warranty against I-Flow only. Plaintiffs allege I-Flow manufactured and sold a  
8 post-operative pain relief device, which was used on Marta E. Sheehan and caused her injury.

9 On September 3, 2009, Plaintiffs filed a Second Amended Complaint asserting the same  
10 causes of action. (Doc. No. 32.)

11 On November 19, 2009, Plaintiffs and the United States filed a joint motion to dismiss the  
12 case with prejudice against the United States only, which the Court granted. (Doc. No. 39.)  
13 Subsequently, Plaintiffs filed the instant motion to remand. (Doc. No. 44.) Plaintiffs request the  
14 Court remand the case to San Diego Superior Court for lack of subject matter jurisdiction because  
15 the only claims remaining are state law claims against I-Flow.

## 16 DISCUSSION

17 As an initial matter, the Court notes that Plaintiffs originally filed the action in this court,  
18 and therefore Plaintiffs' motion to remand to state court is improper. However, the Court *sua*  
19 *sponte* decides the issue whether it should decline to exercise supplemental jurisdiction over  
20 Plaintiffs' state law claims.

21 "It is a fundamental precept that federal courts are courts of limited jurisdiction." Owen  
22 Equipment & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978). Pursuant to 28 U.S.C. § 1367,  
23 federal courts may have supplemental jurisdiction over claims where no original jurisdiction  
24 exists. Sparrow v. Mazda Am. Credit, 385 F. Supp. 2d 1063, 1066 (E.D. Cal. 2005). Section  
25 1367(a) grants supplemental jurisdiction over state law claims "that are so related to claims in the  
26 action within such original jurisdiction that they form part of the same case or controversy under  
27 Article III of the United States Constitution." 28 U.S.C. § 1367(a); United Mine Workers of Am.  
28 v. Gibbs, 383 U.S. 715, 725 (1966). To form part of the same "case or controversy," the state law

1 claims must “derive from a common nucleus of operative fact[s] . . . such that [a plaintiff] would  
2 ordinarily be expected to try them all in one judicial proceeding.” Id. at 725.

3         However, district courts have discretion to decline exercising supplemental jurisdiction  
4 over a state law claim under § 1367, even when they have the power to exercise it. Mendoza v.  
5 Zirkle Fruit Co., 301 F.3d 1163, 1174 (9th Cir. 2002). The district courts may *sua sponte* decline  
6 to exercise supplemental jurisdiction if: 1) the claim raises a novel or complex issue of state law;  
7 2) the state law claim substantially predominates over the federal claims; 3) the district court has  
8 dismissed all claims over which it has original jurisdiction; or 4) if there is some other exceptional  
9 and compelling reason to decline jurisdiction. 28 U.S.C. § 1367(c); see, e.g., Sparrow, 385 F.  
10 Supp. 2d at 1070-71. In deciding whether to exercise supplemental jurisdiction, the court should  
11 consider the interests of judicial economy, convenience, fairness and comity. City of Chicago v.  
12 Int’l College of Surgeons, 522 U.S. 156, 173 (1997); Smith v. Lenches, 263 F.3d 972, 977 (9th  
13 Cir. 2001).

14         Here, two of the enumerated exceptions set forth in § 1367(c) apply. First, the Court has  
15 dismissed all claims over which it has original jurisdiction. On November 19, 2009, the Court  
16 dismissed the case with prejudice against Defendant United States of America, pursuant to the  
17 parties’ joint motion. (Doc. No. 39.) In doing so, the Court necessarily dismissed Plaintiffs’ claim  
18 under the Federal Tort Claims Act against the United States. Plaintiffs’ only remaining claims are  
19 state law claims for strict liability, negligence, breach of implied warranty, and breach of express  
20 warranty against I-Flow. Second, because only state law claims remain, state law claims  
21 necessarily substantially predominate over the federal claims.

22         Furthermore, the interests of judicial economy and convenience do not militate in favor of  
23 exercising supplemental jurisdiction. Although Plaintiff filed her original Complaint on  
24 September 10, 2008, Plaintiff did not add I-Flow as a defendant until May 15, 2009, and the  
25 Second Amended Complaint was not filed until September 2, 2009. Thus, little discovery has  
26 taken place so far. The interest in fairness also does not militate in favor of exercising  
27 supplemental jurisdiction, as Plaintiffs seek to have their case heard in state court and I-Flow does  
28 not oppose Plaintiffs’ motion to remand.

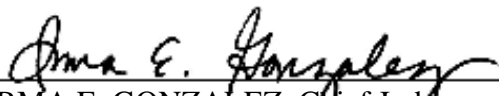
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**CONCLUSION**

Accordingly, the Court DENIES Plaintiffs' motion to remand, but declines to exercise supplemental jurisdiction over Plaintiff's state law claims. This action is DISMISSED WITHOUT PREJUDICE to its being re-filed in state court.

**IT IS SO ORDERED.**

DATED: February 2, 2010

  
IRMA E. GONZALEZ, Chief Judge  
United States District Court