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

MICCAEL ALSHAIKH, BABETTE  
BERIONES  
  
vs.  
  
CITY OF SAN DIEGO, et al.,  
  
Plaintiffs,  
  
Defendants.

CASE NO. 10cv497 BEN (CAB)  
  
**ORDER GRANTING MOTION TO  
DISMISS and REMANDING  
ACTION**

Defendant National Transportation Safety Board’s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is before the Court. For the reasons discussed below, the motion is granted and the action is remanded to the Superior Court of California, County of San Diego.

On March 9, 2010, this action was removed from state court on the basis of federal question jurisdiction (28 U.S.C. §1441) by the United States National Transportation Safety Board (“NTSB”). Now, NTSB moves to dismiss the action. Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate if, taking all factual allegations as true, the complaint fails to state a plausible claim for relief on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). Applying that standard here, the Court finds that Plaintiffs’ complaint fails to state a claim for relief against the NTSB.

**I. FEDERAL CLAIM**

Plaintiffs, proceeding *pro se*, assert a claim of common law negligence against the NTSB. The claim arises out of injuries Plaintiff Alshaiikh allegedly suffered at a trolley station in the City

1 of San Diego. Such an action falls under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §1346,  
2 *et seq.* The FTCA requires a plaintiff file an administrative claim with the agency before filing a  
3 suit in federal court. It is a jurisdictional prerequisite. *Warren v. United States Dep’t of the*  
4 *Interior*, 724 F.2d 776, 777 (9<sup>th</sup> Cir. 1984). While Plaintiffs have apparently filed an  
5 administrative claim with the State of California, they have not done so with respect to the NTSB.  
6 Therefore, the claim against the NTSB must be dismissed.

7 **II. STATE CLAIMS AND REMAND**

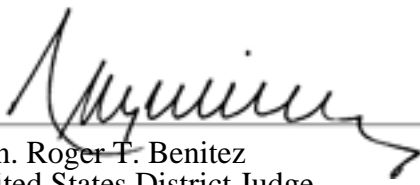
8 Where all federal claims are dismissed in an action containing both federal and state law  
9 claims, a federal court may decline to exercise supplemental jurisdiction over the remaining state  
10 law claims. 28 U.S.C. §1367. “With respect to supplemental jurisdiction in particular, a federal  
11 court has subject-matter jurisdiction over specified state-law claims, which it may (or may not)  
12 choose to exercise. A district court’s decision whether to exercise that jurisdiction after dismissing  
13 every claim over which it had original jurisdiction is purely discretionary.” *Carlsbad Tech., Inc. v.*  
14 *HIF BIO, Inc.*, 129 S. Ct. 1862, 1866 (2009) (citations omitted). Here, the claim against the NTSB  
15 is being dismissed. No other federal claims or federal defendants remain. Therefore, the Court  
16 declines to exercise supplemental jurisdiction over the remaining claims and defendants and the  
17 case is hereby remanded to the Superior Court of California, County of San Diego, for further  
18 proceedings.

19 **III. CONCLUSION**

20 Defendant NTSB’s motion to dismiss is granted. The Court declines to exercise  
21 supplemental jurisdiction over remaining state law claims or non-federal defendants. The case is  
22 hereby remanded to the Superior Court of California, County of San Diego, for further  
23 proceedings.

24 **IT IS SO ORDERED.**

25 DATED: July 27, 2010

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28 Hon. Roger T. Benitez  
United States District Judge