

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

YARET MORALES, as next friend of  
ESTELA LOREDO MORALES, the  
real party in interest,

Plaintiff,

v.

PALOMAR HEALTH; BRUCE  
FRIEDBERG; CEP AMERICA LLC;  
KELLY PRETORIOUS; RADY  
CHILDREN’S HOSPITAL AND  
HEALTH CENTER; WENDY  
HUNTER; and CHILDREN’S  
SPECIALISTS OF SAN DIEGO, A  
MEDICAL GROUP, INC.,

Defendants.

Case No. 3:14-cv-0164-GPC-BGS

**ORDER:**

**(1) GRANTING PALOMAR  
HEALTH’S MOTION TO  
DISMISS AS UNOPPOSED, (ECF  
NO. 30);**

**(2) DENYING FRIEDBERG AND  
CEP’S MOTION TO DISMISS,  
(ECF NO. 31)**

On May 16, 2014, defendant Palomar Health filed a motion to dismiss Plaintiff’s first cause of action pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim against Palomar Health. (ECF No. 30.) On the same day, defendants Bruce Friedberg (“Friedberg”) and California Emergency Physicians Group dba California Emergency Physicians America (erroneously sued as CEP America, LLC) (“CEP”) filed a separate motion to dismiss Plaintiff’s third cause of action pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. (ECF

1 No. 31.) The Court set a briefing schedule requiring any response to the foregoing  
2 motions to be filed on or before July 18, 2014. To date, the Court has received no  
3 response to the foregoing motions.

4 **1. Palomar Health’s Motion to Dismiss**

5 Palomar Health moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to  
6 dismiss Plaintiff’s first cause of action for violation of the Emergency Medical  
7 Treatment and Active Labor Act (“EMTALA”). Palomar Health argues Plaintiff has  
8 failed to allege facts sufficient to support her EMTALA claim as alleged against  
9 Palomar Health.

10 Civil Local Rule 7.1.f.3.c provides: “If an opposing party fails to file the papers  
11 in the manner required by Civil Local Rule 7.1.e.2, that failure may constitute a consent  
12 to the granting of a motion or other request for ruling by the court.” While “[f]ailure  
13 to follow a district court’s local rules is a proper ground for dismissal,” courts must  
14 consider the following factors before dismissing a case on such a ground: “(1) the  
15 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage  
16 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
17 disposition of cases o[n] their merits; and (5) the availability of less drastic sanctions.”  
18 Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (internal quotation marks & citation  
19 omitted).

20 The Court finds the public’s interest in expeditious resolution of litigation  
21 weighs in favor of dismissal, as Plaintiff’s claims against Palomar Health will be  
22 entirely resolved without further delay if Palomar Health’s Motion is granted. The  
23 Court’s need to manage its docket also weighs in favor of dismissal, as dismissal of  
24 Palomar Health will result in a less complex, more streamlined case for the Court to  
25 manage. The risk of prejudice to Palomar Health weighs in favor of dismissal, as  
26 Palomar Health would be required to participate in this case without Plaintiff having  
27 responded to Palomar Health’s arguments for dismissal. The public policy favoring  
28 disposition of cases on their merits weighs against dismissal; yet, Plaintiff’s failure to

1 respond to Palomar Health’s Motion indicates Plaintiff’s disregard for disposing of her  
2 case on the merits. Further, any dismissal would be without prejudice. Finally, the  
3 Court is not imposing sanctions, but is instead considering whether to grant an  
4 unopposed motion. Having considered the above factors, the Court finds they weigh  
5 in favor of granting Palomar Health’s Motion as unopposed.

6 **2. Friedberg & CEPA’s Motion to Dismiss**

7 Friedberg and CEP move, pursuant to Federal Rule of Civil Procedure 12(b)(1),  
8 to dismiss Plaintiff’s medical negligence claims for lack of subject-matter jurisdiction.  
9 Friedberg and CEP argue the Court will be divested of federal-question jurisdiction if  
10 Plaintiff’s EMTALA claims against Palomar Health and co-defendant Rady Children’s  
11 Hospital San Diego (“RCHSD”) are dismissed.

12 Federal courts are courts of limited jurisdiction. See Gould v. Mutual Life Ins.  
13 Co. v. New York, 790 F.2d 769, 774 (9th Cir. 1986). As such, a federal court cannot  
14 reach the merits of any dispute until it confirms its own subject matter jurisdiction. See  
15 Steel Co. v. Citizens for a Better Environ., 523 U.S. 83, 93-94 (1998). Federal-  
16 question jurisdiction exists only when a federal question is presented on the face of a  
17 properly pled complaint. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).

18 Because the Court has denied RCHSD’s motion to entirely dismiss Plaintiff’s  
19 EMTALA claim, as set forth in the order thereon, the Court rejects Friedberg and  
20 CEP’s argument that this Court lacks subject-matter jurisdiction over this case. The  
21 Court will therefore deny Friedberg & CEP’s Motion to Dismiss.

22 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 23 1. Palomar Health’s Motion to Dismiss, (ECF No. 30), is **GRANTED** as  
24 unopposed;
- 25 2. Friedberg and CEP’s Motion to Dismiss, (ECF No. 31), is **DENIED**; and

26 ///

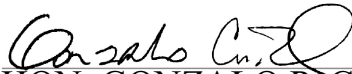
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. The hearing on these motions, currently set for August 15, 2014, is  
**VACATED.**

DATED: August 12, 2014

  
HON. GONZALO P. CURIEL  
United States District Judge