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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 PENN AIR CONTROL, INC.,  
12 Plaintiff,  
13 v.  
14 BILBRO CONSTRUCTION COMPANY,  
15 INC. and INTERNATIONAL FIDELITY  
16 INSURANCE COMPANY,  
17 Defendants.

Case No.: 16-cv-0003-WQH-NLS

**ORDER**

18 And Related Counterclaims.

19 HAYES, Judge:

20 On November 28, 2018, Plaintiff Penn Air Control Inc.’s federal claim under the  
21 Miller Act, 40 U.S.C. § 3131, was voluntarily dismissed. (ECF No. 220). On January 4,  
22 2019, Bilbro Construction Company (Bilbro) “request[ed] [that] the Court . . . determine  
23 whether it still has subject matter jurisdiction over this case.” (ECF No. 229 at 2). On  
24 January 7, 2019, The Court ordered the parties to file briefs addressing this Court’s  
25 continuing exercise of supplemental jurisdiction over the remaining state law claims.  
26 Briefs were received from Alpha Mechanical (Alpha) (ECF Nos. 234, 238), Shadpour  
27 Consulting Engineers (Shadpour) (ECF Nos. 235, 237), and Bilbro Construction Company  
28 (ECF No. 236).

1 Alpha and Shadpour contend that this Court should continue to exercise  
2 supplemental jurisdiction over this matter because of the substantial resources that have  
3 already been invested in this case. *See* ECF No. 234 at 2 (“In preparation for trial, all the  
4 exhibits have been tagged and exchanged, all the motions in limine have been briefed and  
5 submitted to the Court, all the witnesses have been lined up, all the experts have been lined  
6 up, the parties prepared the joint jury instructions, the parties submitted voir dire questions,  
7 the parties prepared their special verdict forms, the parties prepared their versions of the  
8 statement of the case, etc.”).

9 Bilbro contends that “[i]t appears that this Court no longer has Article III subject  
10 matter jurisdiction over this case and, therefore, should dismiss the case . . . and, if any  
11 party so desires, the state law claims may be refiled in state court.” (ECF No. 236 at 5).

### 12 **I. Legal Standard**

13 Upon a request from a party, the Court is required to make a finding regarding its  
14 decision to exercise supplemental jurisdiction. *Acri v. Varian Assocs., Inc.*, 114 F.3d 999,  
15 1000 (9th Cir. 1997) (en banc) (“[T]he court is not required to make a § 1367(c) analysis  
16 unless asked to do so by a party.”). The federal supplemental jurisdiction statute provides:  
17 “[I]n any civil action of which the district courts have original jurisdiction, the district  
18 courts shall have supplemental jurisdiction over all other claims that are so related to claims  
19 in the action within such original jurisdiction that they form part of the same case or  
20 controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). A  
21 district court may decline to exercise supplemental jurisdiction over a state law claim if:

- 22 (1) the claim raises a novel or complex issue of State law,
- 23 (2) the claim substantially predominates over the claim or claims over which the  
24 district court has original jurisdiction
- 25 (3) the district court has dismissed all claims over which it has original  
26 jurisdiction, or
- 27 (4) in exceptional circumstances, there are other compelling reasons for declining  
28 jurisdiction.

1 28 U.S.C. § 1367(c). “Depending on a host of factors, then—including the circumstances  
2 of the particular case, the nature of the state law claims, the character of the governing state  
3 law, and the relationship between the state and federal claims—district courts may decline  
4 to exercise jurisdiction over supplemental state law claims.” *Chicago v. Int’l Coll. of*  
5 *Surgeons*, 522 U.S. 156, 173 (1997). “While discretion to decline to exercise supplemental  
6 jurisdiction over state law claims is triggered by the presence of one of the conditions in §  
7 1367(c), it is informed by the [*United Mine Workers of Am. v. Gibbs*, 383 U.S. 715 (1966)]  
8 values ‘of economy, convenience, fairness, and comity.’” *Acri*, 114 F.3d at 1001; *see*  
9 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

## 10 **II. Ruling of the Court**

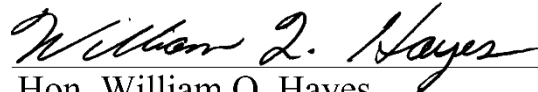
11 The complaint in this case was filed on July 17, 2015, and the Court did not lose  
12 original jurisdiction over this matter until Penn Air’s Miller Act claim was dismissed on  
13 November 28, 2018. The Court ruled on numerous motions and invested substantial  
14 resources in this matter during the three years the Court oversaw this case under its original  
15 jurisdiction. At this point, the parties have already submitted motions in limine, trial briefs,  
16 and proposed jury instructions, and trial is set to begin in less than one month. The Court  
17 finds that the interests of judicial economy, convenience and fairness would not be served  
18 by dismissing this case at this relatively late stage in these proceedings. *See Trs. of Constr.*  
19 *Indus. v. Desert Landscape & Maint., Inc.*, 333 F.3d 923, 926 (9th Cir. 2003) (District court  
20 abused its discretion when it declined to exercise supplemental jurisdiction over a three-  
21 year-old case a week before trial: “Dismissing the case after such a long delay and after the  
22 parties were essentially done with trial preparation was neither fair to the parties nor an  
23 efficient use of judicial resources.”).

## 24 **III. Conclusion**

25 The Court will continue to exercise its supplemental jurisdiction over this matter.  
26 The Court will hear oral argument on motions in limine and address all other pretrial  
27 matters on January 31, 2019 at 1:00 pm.  
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1 IT IS HEREBY ORDERED that all parties shall exchange any demonstrative  
2 exhibits they intend to use in their opening statements and send a copy to the Court's efile  
3 box by January 24, 2019.

4 Dated: January 18, 2019

  
5 Hon. William Q. Hayes  
6 United States District Court

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