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

RICHARD OLANGO ABUKA,  
Plaintiff,  
  
v.  
  
CITY OF EL CAJON, *et al.*,  
Defendants.

Case No. 17-cv-00089-BAS-NLS  
*consolidated with*  
Case No. 17-cv-00347-BAS-NLS  
  
**ORDER GRANTING  
PLAINTIFFS’ EX PARTE  
MOTION**  
  
**[ECF No. 48]**

Presently before the Court is Plaintiff Taina Rozier, C.O., and H.C.’s (“Plaintiffs”) ex parte motion for an order declining supplemental jurisdiction over Plaintiffs’ state law claim for wrongful death based on negligence. (ECF No. 48); *see* ECF No. 5 in Case No. 17-cv-347-BAS-NLS (Fourth Cause of Action). Defendants do not object to this motion. (ECF No. 49.)

Plaintiffs’ claim is based on the events when Alfred Olango’s sister called 911 seeking emergency medical help for Mr. Olango, whom she believed was experiencing a mental breakdown. (ECF No. 5 (in Case No. 17-cv-347).) El Cajon Police Officer Richard Gonsalves responded to the call and confronted Mr. Olango,

1 shooting and killing him within a few minutes of arriving. (*Id.*) Currently, another  
2 case based on the same events is set for trial on June 22, 2018 in San Diego Superior  
3 Court. (ECF No. 48 at 3 (referring to *Olango v. City of El Cajon*, Case No. 37-2017-  
4 00005331-CU-PO-CTL).) Plaintiffs allege that this case “will necessarily involve the  
5 same factual determinations as would be decided by the trier of fact in Plaintiffs’  
6 Fourth Cause of Action for wrongful death based on negligence.” (*Id.*)

7 Plaintiffs now move for this Court to decline supplemental jurisdiction over  
8 this single claim pursuant to 28 U.S.C. § 1367(c)(4). (ECF No. 48 at 3.) Under  
9 Section 1367(c)(4), a court may decline to exercise supplemental jurisdiction over a  
10 claim if, “in exceptional circumstances, there are other compelling reasons for  
11 declining jurisdiction.” In addition to determining whether exceptional circumstances  
12 exist, a court must also “accommodate the values of economy, convenience, fairness,  
13 and comity” when declining jurisdiction. *Exec. Software N. Am., Inc. v. U.S. Dist. Ct.*  
14 (*Page*), 24 F.3d 1545, 1556 (9th Cir. 1994), overruled on other grounds by *Cal. Dept.*  
15 *of Water Resources v. Powerex Corp.*, 533 F.3d 1087, 1093 (9th Cir. 2008).

16 Plaintiffs argue that the Court should decline jurisdiction because “collateral  
17 estoppel and/or res judicata will likely be asserted by the prevailing party in  
18 whichever litigation is decided first to preclude a different result in the subsequent  
19 litigation” (*Id.* at 4-5.) Thus, Plaintiffs allege they “may suffer irreparable harm if  
20 they are precluded from defending their interests” in the upcoming state trial. (*Id.*)  
21 However, Plaintiffs do not include any allegations about how these concerns would  
22 be rectified by the Court declining jurisdiction, nor do they address the additional  
23 values the Court must also consider when declining jurisdiction. *See*  
24 *Exec. Software*, 24 F.3d at 1556. Therefore, after reviewing Plaintiffs’ motion, the  
25 Court construes Plaintiffs’ request as a request for voluntary dismissal under Federal  
26 Rule of Civil Procedure 41(a)(2). Fed. R. Civ. Pro. 41(a)(2) (“[A]n action may be  
27 dismissed [without prejudice] at the plaintiff’s request only by court order, on terms  
28


1 that the court considers proper.“) The Court finds that dismissal of Plaintiffs’ claim  
2 without prejudice would be proper in light of the related state action.

3 In light of the foregoing, the Court **GRANTS** Plaintiffs’ motion (ECF No. 48)  
4 and **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ Fourth Cause of Action for  
5 wrongful death based on negligence in Case No. 17-cv-347-BAS-NLS under Rule  
6 41(a)(2) so that Plaintiffs may pursue their state law claim in state court.

7 **IT IS SO ORDERED.**

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**DATED: May 18, 2018**

  
**Hon. Cynthia Bashant**  
**United States District Judge**