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

CHRISTINE KAY,

Plaintiff,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al,

Defendants.

Case No.: 17CV1512-MMA (KSC)
**ORDER SUA SPONTE REMANDING
ACTION TO STATE COURT**

On June 9, 2017, Plaintiff Christine Kay filed this action in the Superior Court of the State of California, County of San Diego, against Defendants Regents of the University of California, University of California San Diego Medical Center, Richard Todd Allen, M.D., Benjamin John Drinkwine, M.D., University of California San Diego Medical Group, Point Loma Convalescent Hospital, Noli Cava, M.D., Cook Group, Inc., Cook Medical Inc. a/k/a Cook Medical, Inc., Cook Medical, LLC, Cook Inc., Medical Engineering and Development Institute, Inc., Cook Medical Technologies, Cook Denmark International APS, Cook Denmark Holding APS, Cook Group Europe APS, Cook Nederland BV, and William Cook Europe APS. *See* Doc. No. 1-2. Plaintiff asserts product liability claims against some defendants, and medical malpractice claims against

1 others. On July 26, 2017, Defendants Cook Group Inc., Cook Medical LLC, f/k/a Cook
2 Medical Inc., Cook Inc., Cook Research Inc., and Cook Medical Technologies LLC (the
3 “removing Defendants”) removed this action to this Court. The parties now jointly move
4 the Court to sever Plaintiff’s medical malpractice claims, and remand those claims to
5 state court. *See* Doc. No. 11. Having reviewed the parties’ joint motion, as well as
6 Defendants’ Notice of Removal, the Court finds it does not have subject matter
7 jurisdiction over this action and that the removal is procedurally defective. The Court
8 therefore *sua sponte* **REMANDS** this action to San Diego County Superior Court.

9 DISCUSSION

10 Federal courts are of limited jurisdiction. *Lowdermilk v. U.S. Bank Nat’l Ass’n*,
11 479 F.3d 994, 997 (9th Cir. 2007). They possess only that power authorized by the
12 Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541
13 (1986). Federal district courts are constitutionally required to raise issues related to
14 federal subject matter jurisdiction, and may do so *sua sponte*. *Steel Co. v. Citizens for a*
15 *Better Env’t*, 523 U.S. 83, 93-94 (1998); *see Indus. Tectonics, Inc. v. Aero Alloy*, 912
16 F.2d 1090, 1092 (9th Cir. 1990). Removal jurisdiction is governed by 28 U.S.C. § 1441,
17 *et seq.* Section 1441(a), provides for removal of a civil action from state to federal court
18 only if the case could have originated in federal court. *Caterpillar, Inc. v. Williams*, 482
19 U.S. 386, 392, (1987); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). Courts
20 construe section 1441(a) strictly against removal, and “[f]ederal jurisdiction must be
21 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*
22 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

23 Specifically, for an action to be removed on the basis of federal question
24 jurisdiction, the complaint must establish either that federal law creates the cause of
25 action or that the plaintiff’s right to relief necessarily depends on the resolution of
26 substantial questions of federal law. *Franchise Tax Board of Cal. v. Construction*
27 *Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 10-11 (1983). Additionally, a
28 federal court also has jurisdiction over an action involving citizens of different states

1 where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. “[C]omplete
2 diversity of citizenship” is required, meaning each plaintiff must be diverse from each
3 defendant. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67-68 (1996). If a matter is removable
4 solely on the basis of diversity jurisdiction pursuant to § 1332, the action may not be
5 removed if any defendant is a citizen of the forum state. *See* 28 U.S.C. § 1441(b)(2).

6 Here, the parties admit that, as citizens of California, diversity does not exist
7 between Plaintiff and Defendants Regents of the University of California, University of
8 San Diego Medical Center, Richard Todd Allen, M.D., Benjamin John Drinkwine, M.D.,
9 University of California San Diego Medical Group, Point Loma Convalescent Hospital,
10 and Noli Cava, M.D. *See* Doc. No. 11.¹ Accordingly, complete diversity does not exist,
11 and some of the defendants are citizens of the forum state. Further, the Court is
12 unpersuaded by the removing Defendants’ argument that the Court should disregard the
13 non-diverse Defendants for the purposes of removal pursuant to the doctrine of
14 “fraudulent misjoinder.” *See* Doc. Nos. 1, 11. It is unclear whether that doctrine is
15 viable in this Circuit,² and regardless, it would not provide for removal in these
16 circumstances. “Essentially, fraudulent misjoinder examines the facts to determine
17 whether claims against one defendant arise out of the same transaction, occurrence or
18 series of transactions or occurrences or have any real connection” to the facts underlying
19 the claims between diverse parties. *See Blasco v. Atrium Med. Corp.*, No. C 14-03285
20 EDL, 2014 WL 12691051, at *3 (N.D. Cal. Oct. 30, 2014) (internal alterations and
21 quotations omitted). Here, Plaintiff’s product liability claims against allegedly diverse
22 defendants arise out of the same facts as her medical malpractice claims against non-
23 diverse defendants. Based on the foregoing, the Court lacks jurisdiction over this action.

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26 ¹ The lack of diversity is also apparent from the Notice of Removal. *See* Doc. No. 1.

27 ² While the Ninth Circuit recognizes the separate, similarly named doctrine of fraudulent joinder, “the
28 weight of authority among California district courts is that the [] fraudulent misjoinder doctrine is not
applicable in the Ninth Circuit.” *See Blasco v. Atrium Med. Corp.*, No. C 14-03285 EDL, 2014 WL
12691051, at *2 (N.D. Cal. Oct. 30, 2014).

