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

SHANNA PASELIO,)	Case No.: 3:23-cv-00887-BEN-DDL
Plaintiff,)	
v.)	ORDER: (1) REMANDING CASE TO
FRESENIUS MEDICAL CARE)	CALIFORNIA SUPERIOR COURT;
HOLDING, INC.; FMC NORTH COAST)	AND (2) DENYING MOTION TO
KIDNEY CENTER; FRESENIUS)	DISMISS AS MOOT
MEDICAL CARE NORTH AMERICA;)	[ECF No. 13]
KATRINA DEMLOW; and DOES 1 to)	
10;)	
Defendants.)	

I. INTRODUCTION

Plaintiff Shanna Paselio brings this action against Defendants Fresenius Medical Care Holding, Inc., et al. (“Fresenius”), FMC North Coast Kidney Center, Fresenius Medical North America, and Katrina Demlow (“Demlow”) (collectively, “Defendants”). ECF No. 9 (“FAC”). Plaintiff alleges various claims of discrimination, retaliation, wrongful discharge, and more related to her employment with Defendants. *See generally id.* Before the Court is Fresenius’ and Demlow’s Motion to Dismiss Plaintiff’s First Amended Complaint. ECF No. 13. As set forth below, the Court **DENIES** as moot the Motion to Dismiss and **REMANDS** the case to California Superior Court.

1 **II. PROCEDURAL HISTORY**

2 Plaintiff filed her original Complaint in California Superior Court. *See* ECF No. 1
3 at 11. The Complaint alleged: (1) a civil rights violation of freedom of speech; (2)
4 “protected” class discrimination; (3) failure to prevent discrimination and retaliation; (4)
5 gender discrimination in violation of FEHA; (5) breach of implied contract; (6) breach of
6 the covenant of good faith and fair dealing; (7) violation of California’s Family Rights Act;
7 (8) wrongful constructive discharge of a whistle blower; (9) retaliation in violation of
8 FEHA; (10) harassment in violation of FEHA and California Government Code § 12940(j);
9 (11) negligence; and (12) violation of Business and Professions Code §§ 17200 *et seq.* *See*
10 *generally id.* at 11–39.

11 Fresenius and Demlow removed the case to federal court based on federal question
12 jurisdiction pointing to Plaintiff’s claims made under the First Amendment of the United
13 States Constitution and under the Family and Medical Leave Act, *see* 29 U.S.C. § 2601 *et*
14 *seq.* ECF No. 1 at 3. Fresenius and Demlow then filed a Motion to Dismiss, *see* ECF No.
15 4, but Plaintiff subsequently filed a First Amended Complaint. ECF No. 9. The First
16 Amended Complaint removed the federal claims on which this Court’s original jurisdiction
17 was based and alleged fifteen state causes of action, for: (1) violation of the Unruh Civil
18 Rights Act; (2) a second claim for violation of the Unruh Civil Rights Act; (3) racial
19 discrimination in violation of FEHA; (4) gender discrimination in violation of FEHA; (5)
20 age discrimination in violation of FEHA; (6) failure to prevent discrimination and
21 retaliation in violation of California Government Code § 12940(k); (7) breach of contract;
22 (8) breach of implied contract; (9) breach of the covenant of good faith and fair dealing;
23 (10) violation of California’s Family Rights Act; (11) wrongful discharge; (12) retaliation
24 in violation of FEHA; (13) harassment in violation of FEHA and California Government
25 Code § 12940(j); (14) negligence; and (15) violation of California’s Business and
26 Professions Code §§ 17200, *et seq.* ECF No. 9. Fresenius and Demlow filed a Motion to
27 Dismiss the First Amended Complaint. ECF No. 13. Plaintiff filed an Opposition. ECF
28 No. 14. Fresenius and Demlow filed a Reply. ECF No. 15.

1 **III. DISCUSSION**

2 A district court may inquire into its own jurisdiction at any time. *Herklotz v.*
3 *Parkinson*, 848 F.3d 894, 897 (9th Cir. 2017); *Fossen v. Blue Cross & Blue Shield of Mont.,*
4 *Inc.*, 660 F.3d 1102, 1113 n.7 (9th Cir. 2011) (a district court is free to reexamine
5 supplemental jurisdiction on remand). Although a court is not required at any particular
6 time to *sua sponte* consider whether it is proper to assert continuing federal jurisdiction
7 over state law claims when federal claims are eliminated, it must do so when a party raises
8 the issue. *See Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000–1001 (9th Cir. 1997) (*en*
9 *banc*) (“[W]hile a district court must be sure that it has federal jurisdiction under [28
10 U.S.C.] § 1367(a), once it is satisfied that the power to resolve state law claims exists, the
11 court is not required to make a § 1367(c) analysis unless asked to do so by a party.”).

12 Plaintiff did not make a motion to remand the action to state Court. However,
13 Plaintiff raised the issue in its Opposition to Fresenius’ and Demlow’s Motion to Dismiss,
14 by noting that the federal claims have been removed and stating: “The state claims are
15 before this court pursuant to supplemental jurisdiction with the federal claims. The Court
16 may choose to exercise its discretion and refuse jurisdiction over the state claims and
17 remand them to state court.” ECF No. 14 at 11. Fresenius and Demlow argue that this is
18 not a case where supplemental jurisdiction should be declined, because “Plaintiff’s conduct
19 is a transparent attempt to get her case remanded to state court.” ECF No. 15 at 3.
20 However, Plaintiff makes no formal motion to remand and instead, simply invites the Court
21 to exercise its discretion by declining jurisdiction should it so choose. *See Plute v.*
22 *Roadway Package Sys., Inc.*, 141 F. Supp. 2d 1005, 1007 (N.D. Cal. 2001) (courts may
23 remand *sua sponte* or on motion of a party).

24 “[W]hen a defendant removes a case to federal court based on the presence of a
25 federal claim an amendment eliminating the original basis for federal jurisdiction generally
26 does not defeat jurisdiction.” *Rockwell Intern. Corp. v. United States*, 549 U.S. 457, 474
27 n.6 (2007) (citations omitted). However, a district court’s decision to exercise
28 supplemental jurisdiction when there are no longer claims supporting original jurisdiction

1 is purely discretionary. *See Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639
2 (2009). Once the claim over which it had original jurisdiction is dismissed, a federal court
3 may remand or dismiss the remaining state law claims. 28 U.S.C. § 1367(c)(3). If “the
4 balance of . . . factors indicates that a case properly belongs in state court, as when the
5 federal-law claims have dropped out of the lawsuit in its early stages and only state-law
6 claims remain, the federal court should decline the exercise of jurisdiction by dismissing
7 the case without prejudice.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350
8 (1988) (citations omitted). Remand may be preferable to dismissal when declining to
9 exercise jurisdiction. *Id.* at 352–53 (“Even when the applicable statute of limitations has
10 not expired, a remand may best promote the values of economy, convenience, fairness, and
11 comity.”).

12 *Carnegie-Mellon* observes that “in the usual case in which all federal-law claims are
13 eliminated before trial, the balance of factors to be considered under the pendent
14 jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point
15 toward declining to exercise jurisdiction over the remaining state-law claims [and]
16 these factors usually will favor a decision to relinquish jurisdiction when ‘state issues
17 substantially predominate, whether in terms of proof, of the scope of the issues raised, or
18 of the comprehensiveness of the remedy sought.” 484 U.S. at 350 n. 7 (citations
19 omitted); *Acri*, 114 F.3d at 1001 (“The Supreme Court has stated, and we have often
20 repeated, that ‘in the usual case in which all federal-law claims are eliminated before trial,
21 the balance of factors will point toward declining to exercise jurisdiction over the
22 remaining state-law claims.”). Continuing to assert federal jurisdiction over purely state
23 law claims is less compelling when the federal claim is eliminated at an early stage of the
24 litigation and the case presents novel or complex issues of state law, as does this
25 case. *Carnegie-Mellon*, 484 U.S. at 351 (“When the single federal-law claim in the action
26 was eliminated at an early stage of the litigation, the District Court had a *powerful*
27 *reason* to choose not to continue to exercise jurisdiction.”) (emphasis added).

28 Here, Plaintiff’s First Amended Complaint eliminated the only two federal law

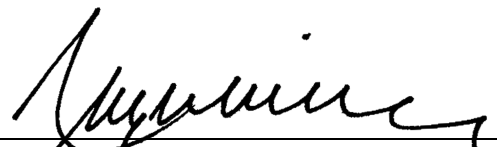
1 claims early in this litigation and now alleges fifteen causes of action based purely on novel
2 state law. Informed by the *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966), values
3 of economy, convenience, fairness, and comity—rather than dismiss the remaining
4 claims—the Court declines to exercise jurisdiction over the fifteen state law claims that
5 remain and instead, remands this case to the Superior Court of California. *See*
6 *Yazdanpanah v. Sacramento Valley Mortg. Grp.*, No. C 09-02024 SBA, 2010 WL 890952,
7 at *1 (N.D. Cal. Mar. 10, 2010) (“When the federal claim that served as the basis for
8 removal is eliminated, either through dismissal by the court or by a plaintiff amending his
9 or her complaint, federal courts may decline to assert supplemental jurisdiction over the
10 remaining state law causes of action and exercise its discretion to remand them to state
11 court.”).

12 **IV. CONCLUSION**

13 The instant action is **REMANDED** to the Superior Court of California, County of
14 San Diego. Because the Court remands the case, Fresenius’ and Demlow’s Motion to
15 Dismiss is **DENIED** as moot.

16 **IT IS SO ORDERED.**

17 DATED: March 26, 2024

18 
19 **HON. ROGER T. BENITEZ**
20 United States District Judge
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