


1 **CONCLUSION**

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3 Accordingly, Plaintiffs' Motion to Remand is GRANTED.  
4 Consequently, both Motions to Change Venue and the Motion to  
5 Dismiss are DENIED as moot. The Clerk of the Court is directed  
6 to close the file.

7 \_\_\_\_\_ IT IS SO ORDERED.

8 Dated: November 6, 2008

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11 \_\_\_\_\_  
12 MORRISON C. ENGLAND, JR.  
13 UNITED STATES DISTRICT JUDGE  
14  
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16 \_\_\_\_\_  
17 <sup>5</sup>(...continued)  
18 see also Thompson v. Regents of University of California, 206  
19 Fed. Appx. 714, 715 (9th Cir. 2006) (not published in the Federal  
20 Reporter).

21 The Court need not decide whether such a waiver occurred  
22 here. It notes, however, that though "a state that voluntarily  
23 brings suit as a plaintiff in state court cannot invoke the  
24 Eleventh Amendment when the defendant seeks removal to a federal  
25 court of competent jurisdiction," and though the Supreme Court  
26 has found removal by a state defendant sufficient to waive  
27 sovereign immunity, it remains unclear whether an arm of a State  
28 can hale an unwilling arm of the same state into federal court  
simply by removing a state action. California ex rel. Lockyer v.  
Dynergy, Inc., 375 F.3d 831, 848 (9th Cir. 2004); Lapides, 535  
U.S. at 624 (2002) (limiting its holding to "state-law claims, in  
respect to which the State has explicitly waived immunity from  
state-court proceedings"). Since a state's waiver of immunity  
must be unequivocally expressed, it is entirely possible that the  
state-Plaintiffs' Motion to Remand in this case could preclude a  
finding that the state-Defendants have so waived their immunity.  
See PennhuPst State School & Hospital v. Halderman, 465 U.S. 89,  
99 (1984); see also Lapides, 535 U.S. at 621. Nevertheless,  
despite its import, this is a question for another day.