

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 WILLIAM NORMAN BROOKS, III,
12 Plaintiff,
13 v.
14 BANK OF AMERICA, NA,
15 Defendant.

Case No.: 3:20-cv-1348-RSH-BLM

**ORDER DENYING MOTION FOR
RECONSIDERATION**

[ECF No. 75]

16
17 Plaintiff filed a Motion for Reconsideration of the Court's July 26, 2022, Order [ECF
18 No. 72] declining to exercise supplemental jurisdiction over the state law claims of absent
19 class members. Plaintiff contends that the Court erred because it did not also dismiss
20 Plaintiff's individual state law claims. The Motion is fully briefed and suitable for
21 submission without oral argument. For the following reasons, the Motion is denied.

22 **I. Background**

23 In the operative First Amended Complaint ("FAC"), Plaintiff William Norman
24 Brooks, III, alleges that Defendant Bank of America, NA ("BoFA"), harmed his credit by
25 wrongfully reporting to consumer credit reporting agencies that Brooks had filed for
26 bankruptcy and that his BoFA account had been "included in bankruptcy." ECF No. 15
27 ¶¶ 21-39. Based on these allegations, the FAC asserts claims under California's Unfair
28 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"), and the California

1 Consumer Credit Reporting Agencies Act, Cal. Civ. Code § 1785 *et seq.* (“CCRAA”), on
2 behalf of a putative class, as well as one individual claim under the federal Fair Credit
3 Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.* Although the FAC includes a federal
4 claim, it does not explicitly allege a basis for original subject matter jurisdiction, alleging
5 only that supplemental jurisdiction exists under 28 U.S.C. § 1367. Neither side has argued
6 that subject matter jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28
7 U.S.C. § 1332(d).

8 On April 25, 2022, the Court issued an Order to Show Cause (“OSC”) why the Court
9 should not decline supplemental jurisdiction over the state law class claims. ECF No. 56.
10 The OSC acknowledged that “Plaintiff’s federal and state claims arise from the ‘common
11 nucleus’ of Defendant’s alleged furnishing of inaccurate information to credit reporting
12 agencies based on its bankruptcy reporting procedures,” but that the class claims “have the
13 potential to predominate over Plaintiff’s individual FCRA claim.” *Id.* at 2-3.

14 In its Response to the OSC, BofA argued that while there is original subject matter
15 jurisdiction based on a federal question, the Court also has subject matter jurisdiction over
16 Brooks’ individual claims on the basis of diversity under 28 U.S.C. § 1332(a) because
17 Brooks and BofA are diverse and more than \$75,000 is in controversy on Plaintiff’s
18 individual claims alone. ECF No. 62. BofA then contended that the Court may exercise
19 supplemental jurisdiction over the claims of absent class members in a case where the
20 diverse named plaintiff’s claims exceed \$75,000, but BofA did not address whether the
21 Court should do so here. *Id.* Rather, BofA concluded only that the Court should find that it
22 has subject matter jurisdiction based on diversity over Plaintiff’s individual claims. *Id.*

23 In his Response to the OSC, Plaintiff agreed “that it is within the Court’s discretion
24 and would be appropriate in this context for the Court to decline to exercise supplemental
25 jurisdiction over the state law claims” ECF No. 63. His Response pointed out that
26 “there are vigorously contested certification issues which pertain solely to the state claims
27 and do not touch the federal claim at all,” such as “interpretation of California law,
28 including whether there are relevant differences between the available remedies under state

1 law versus the FCRA, and the implications of any such differences on class issues including
2 adequacy and predominance.” *Id.* at 1.

3 Based on the Parties’ responses, the Court held that: (1) there is diversity jurisdiction
4 under 28 U.S.C. § 1332(a) over Plaintiff’s individual claims; and (2) the state law claims
5 of absent class members substantially predominate over Brooks’ individual claims. ECF
6 No. 72. The Court therefore declined to exercise supplemental jurisdiction over the state
7 law claims of absent class members. *Id.* Accordingly, the Court dismissed the absent class
8 members’ claims without prejudice and ordered that this action should proceed as an
9 individual action on Plaintiff’s claims under the UCL, CCRAA, and FCRA. *Id.*

10 Plaintiff now moves for reconsideration of the Court’s Order. Notably, Plaintiff does
11 not argue that the Court erred by declining to exercise supplemental jurisdiction over the
12 absent class members’ claims. Rather, he argues that the Court should *also* dismiss his
13 individual state law claims so that he may re-file them as class claims in state court.

14 II. Analysis

15 Plaintiff contends that the Court erred because his state law claims cannot be severed
16 from those of the absent class members. However, he offers no support for this proposition.
17 Instead, Plaintiff uses most of his Motion to argue that the cases cited in the OSC do not
18 support the Court’s Order declining to exercise jurisdiction over the absent class members’
19 claims [ECF No. 72].¹ This argument is a red herring because the Court did not cite to or
20 rely on those cases in the actual dismissal order Plaintiff asks the Court to reconsider.

21
22
23 ¹ The cases are: *Wong v. HSBC Mortg. Corp. (USA)*, No. 07-cv-2446, 2009 WL 151014 (N.D. Cal.
24 2009); *Hoffman v. Constr. Protective Servs., Inc.*, No. 03-cv-01006, 2004 WL 5642136 (C.D. Cal. Jul. 13,
25 2004); and *Martin v. Dahlberg, Inc.*, 156 F.R.D. 207 (N.D. Cal. 1994). These cases are distinguishable
26 because, unlike the situation here, subject matter jurisdiction over the state law claims of both the class
27 representatives and the absent class members was supplemental. *See Martin*, 156 F.R.D. at 218 (noting
28 that federal RICO claims were “the only basis for federal jurisdiction in this action”); *Hoffman*, 2004 WL
5642136, at *1 (noting that subject matter jurisdiction existed under 28 U.S.C. § 1331 based on the
assertion of federal Fair Labor Standards Act (“FLSA”) claims); *Wong*, 2009 WL 151014 (noting subject
matter jurisdiction over state law claims was supplemental to federal FLSA claim). Thus, it was within
the courts’ discretion in those cases to decline to exercise supplemental jurisdiction over the state law
claims of both the class representatives and absent class members.

1 Rather, the Court premised its decision on the Parties' responses to the OSC: (1)
2 Defendant's argument that there is diversity jurisdiction over Plaintiff's individual claims;
3 and (2) Plaintiff's acknowledgment that it would be appropriate for the Court to exercise
4 its discretion to decline to exercise supplemental jurisdiction over the state law claims.

5 Plaintiff's Motion for Reconsideration ignores the basis of the Court's subject matter
6 jurisdiction over the claims in the FAC. In the dismissal order, the Court found that it has
7 original subject matter jurisdiction over Plaintiff's individual claims on the basis of
8 diversity because Plaintiff and BofA are diverse and the amount in controversy between
9 Plaintiff and BofA on Plaintiff's individual claims alone exceeds \$75,000. Plaintiff does
10 not dispute this finding in his Motion.²

11 The existence of diversity jurisdiction over Plaintiff's individual claims puts this
12 case in a different position from most other cases where courts have declined to exercise
13 supplemental jurisdiction over state law class claims. Because diversity jurisdiction exists,
14 the Court does not have discretion to decline subject matter jurisdiction over Plaintiff's
15 individual state law claims. *See, e.g., Sorosky v. Burroughs Corp.*, 826 F.2d 794, 805 (9th
16 Cir. 1987) ("Although a district court does have discretion whether to exercise jurisdiction
17 over state claims pendent to claims raising a question arising under federal law, a district
18 court does not have discretion to refuse jurisdiction over state claims in a diversity case.")
19 (internal citation omitted). At the same time, neither party has contended that the absent
20 class members' claims each individually satisfy the requirements for diversity jurisdiction
21

22
23 ² Plaintiff does not address the existence of diversity jurisdiction in his Motion. In his Reply,
24 Plaintiff evades the question of whether more than \$75,000 is in controversy with respect to his individual
25 claims by arguing (without authority) that only the basis for jurisdiction asserted in the FAC is relevant
26 and jurisdiction based on diversity can only exist under CAFA because the case is a class action. However,
27 the FAC does not actually allege a basis for original jurisdiction, so it unclear whether Plaintiff was
28 asserting original jurisdiction based on diversity or federal question (or both). Moreover, Plaintiff still has
not refuted that he seeks over \$75,000 for his individual claims. Finally, traditional diversity jurisdiction
under 28 U.S.C. § 1332(a) can exist independently of CAFA in class action cases. *See Canela v. Costco
Wholesale Corp.*, 971 F.3d 845, 849 (9th Cir. 2020) (noting that diversity jurisdiction under Section
1332(a) and CAFA are "two independent bases for federal subject matter jurisdiction").

1 under 28 U.S.C. § 1332(a) or collectively satisfy the jurisdictional requirements of CAFA.
2 Thus, the only possible avenue for subject matter jurisdiction over the absent class
3 members' claims is through supplemental jurisdiction under 28 U.S.C. § 1367. *See Gibson*
4 *v. Chrysler Corp.*, 261 F.3d 927, 938 (9th Cir. 2001) (concluding that 28 U.S.C. § 1367
5 “confers supplemental jurisdiction over the claims of class members in a diversity class
6 action when named plaintiffs have claims with an amount in controversy in excess of
7 \$75,000”); *see also Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001) (“[I]f
8 a named plaintiff in a diversity class action has a claim with an amount in controversy in
9 excess of \$75,000, 28 U.S.C. § 1367 confers supplemental jurisdiction over claims of
10 unnamed class members irrespective of the amount in controversy in those claims . . .”).

11 To summarize, the Court's jurisdiction over the absent class members' claims is
12 supplemental under 28 U.S.C. § 1367(a). Subpart (c) of § 1367 gives the Court discretion
13 to decline to exercise such jurisdiction and the Court has exercised that discretion here. On
14 the other hand, the Court's jurisdiction over Plaintiffs' individual state law claims is based
15 on diversity under 28 U.S.C. § 1332(a). The Court does not have discretion to decline to
16 exercise diversity jurisdiction. Therefore, it would be error for the Court to dismiss
17 Plaintiff's individual state law claims simply because it has declined to exercise
18 supplemental jurisdiction over the absent class members' state law claims.

19 **III. Conclusion**

20 For the above reasons, Plaintiff's Motion for Reconsideration [ECF No. 75] is
21 **DENIED.**

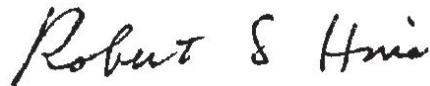
22 To be clear, this decision is not, as Plaintiff contends, dispositive of class
23 certification. The Court finds only that the claims over which it has supplemental
24 jurisdiction (i.e., the claims of “hundreds or thousands” of absent class members [ECF No.
25 15 ¶ 42]) would substantially predominate the claims over which the Court has original
26 diversity jurisdiction (i.e., Plaintiff's individual claims). For that reason, the Court is
27
28

1 exercising its discretion under 28 U.S.C. § 1367(c)(2) to decline supplemental jurisdiction.³
2 The Court is not deciding whether Plaintiff can bring the state law claims on behalf of a
3 class. Rather, the Court is declining to exercise the jurisdiction that would permit the Court
4 to make such a decision in the first instance.

5 The Court simply lacks the discretion to provide Plaintiff with the disposition he
6 seeks in his Motion, which is for the Court to decline to exercise subject matter jurisdiction
7 over Plaintiff's individual state law claims. If Plaintiff no longer wishes to proceed with
8 his individual state law claims in federal court, he may file a motion to dismiss them under
9 Federal Rule of Civil Procedure 41(a)(2).

10 **SO ORDERED.**

11 Dated: October 25, 2022.



12 Hon. Robert S. Huie
13 United States District Judge
14
15
16
17
18
19
20
21
22

23
24 ³ Indeed, it could be argued that this holding pre-supposes the existence of class certification because
25 if class certification is denied, there would no longer be class claims in this case and therefore no need to
26 decline supplemental jurisdiction over those claims. Conversely, it would make little sense for a district
27 court to be required to certify a class before considering whether to exercise its discretion to decline
28 supplemental jurisdiction over the claims of absent class members. In any event, the jurisdictional question
of whether the absent class members' state law claims predominate over Plaintiff's individual claims is
distinct from the requirements under Federal Rule of Civil Procedure 23 for certification of a class with
Plaintiff as class representative.