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cc: order, docket, remand letter to Los Angeles Superior Court  
No. BC 516756

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOHN DOE,	)	Case No. CV 13-06436 DDP (ASx)
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S MOTION
	)	TO REMAND
v.	)	
	)	[docket numbers 12 and 13]
FINANCIAL INDUSTRY	)	
REGULATORY AUTHORITY, INC.,	)	
	)	
Defendant.	)	
_____	)	

Presently before the Court are Plaintiff's Motion to Remand and For Attorney's Fees and Defendant's Motion to Dismiss. For the reasons stated below, Plaintiff's Motion to Remand is GRANTED. Plaintiff's request for attorney's fees is DENIED. Defendant's Motion to Dismiss is vacated as moot.

**I. Background**

Plaintiff John Doe ("Plaintiff") is a financial advisor and broker-dealer associated with Merrill Lynch. (Complaint ¶ 4.) Defendant Financial Industry Regulatory Authority ("FINRA" or "Defendant"), formerly known as the National Association of

1 Securities Dealers ("NASD"), is a self-regulatory organization for  
2 broker-dealers. (Id. ¶ 1.) Under the Securities Exchange Act,  
3 FINRA's duties include the duty to "establish and maintain a system  
4 for collecting and retaining registration information" about  
5 registered broker-dealers such as Plaintiff. 15 U.S.C. §  
6 78o-3(i)(1)(A). "Registration information" includes information  
7 about "disciplinary actions, regulatory, judicial, and arbitration  
8 proceedings." Id. § 78o-3(i)(5). FINRA fulfills this duty by  
9 maintaining a database called the Central Registration Depository  
10 ("CRD"), publicly available through FINRA BrokerCheck, which  
11 contains disclosures relating to disciplinary actions or other  
12 proceedings brought against financial advisors. (Complaint ¶¶ 2-3.)

13 Plaintiff alleges that he has seven disclosure items listed on  
14 BrokerCheck as "customer disputes." (Id. ¶¶ 6-7.) One disclosure  
15 item is listed as "Customer Dispute - Settled" and the other six as  
16 "Customer Dispute - Closed - No Action/Withdrawn/Dismissed/Denied."  
17 (Id.) Plaintiff alleges that in five of the seven cases, the  
18 customers did not pursue their complaints after Merrill Lynch  
19 responded to them. (Id. ¶ 30.) In one of the other cases, the  
20 customer filed an arbitration against Merrill Lynch, but no payment  
21 was made. (Id. ¶ 31.) The last item related to an alleged  
22 administrative error. (Id. ¶ 32.) Plaintiff alleges that these  
23 disclosures have caused him harm and serve no public policy  
24 purpose, and requests that the Court use its equitable powers to  
25 grant declaratory relief and expungement of these disclosure items.  
26 (Id. ¶¶ 7-9.)

27 Plaintiff filed his complaint in the Los Angeles County  
28 Superior Court on July 31, 2013. (Notice of Removal ¶ 1.) Defendant

1 was served with a copy of the complaint on August 2, 2013. (Id.)  
2 Defendant timely removed the action on September 3, 2013 on the  
3 grounds of federal question jurisdiction. (Id.)

#### 4 **II. Legal Standard**

5 A defendant may remove a case from state court to federal  
6 court if the case could have originally been filed in federal  
7 court. 28 U.S.C. § 1441(a); see also Snow v. Ford Motor Co., 561  
8 F.2d 787, 789 (9th Cir. 1977). As the removing party, Defendant  
9 bears the burden of proving federal jurisdiction. Duncan v.  
10 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996); see also Matheson v.  
11 Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir.  
12 2003). The removal statute is strictly construed against removal  
13 jurisdiction, and federal jurisdiction must be rejected if any  
14 doubt exists as to the propriety of removal. Gaus v. Miles, Inc.,  
15 980 F.2d 564, 566 (9th Cir. 1992) (explaining that courts resolve  
16 doubts as to removability in favor of remand).

17 Federal question jurisdiction exists where a civil action  
18 arises "under the Constitution, laws, or treaties of the United  
19 States." 28 U.S.C. § 1331. "For a case to 'arise under' federal  
20 law, a plaintiff's well-pleaded complaint must establish either (1)  
21 that federal law creates the cause of action or (2) that the  
22 plaintiff's asserted right to relief depends on the resolution of a  
23 substantial question of federal law. Federal jurisdiction cannot  
24 hinge upon defenses or counterclaims, whether actual or  
25 anticipated." K2 Am. Corp. v. Roland Oil & Gas, LLC, 653 F.3d 1024,  
26 1029 (9th Cir. 2011).

27 Generally, even if federal question jurisdiction exists, state  
28 courts have concurrent jurisdiction over cases arising under

1 federal law. Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473,  
2 477-78 (1981). However, "the presumption of concurrent jurisdiction  
3 can be rebutted by an explicit statutory directive, by unmistakable  
4 implication from legislative history, or by a clear incompatibility  
5 between state-court jurisdiction and federal interests." Id. at  
6 478.

### 7 **III. Discussion**

8 Plaintiff argues that the action should be remanded to state  
9 court because this Court does not have jurisdiction over the  
10 action.

11 Under FINRA Rule 2080(a), "[m]embers or associated persons  
12 seeking to expunge information from the CRD system arising from  
13 disputes with customers must obtain an order from a court of  
14 competent jurisdiction directing such expungement." Under Rule  
15 2080(b), a party seeking expungement must "name FINRA as an  
16 additional party and serve FINRA with all appropriate documents  
17 unless this requirement is waived." Rule 2080 does not provide any  
18 substantive standard for determining whether expungement is  
19 appropriate or required. California has a state law cause of action  
20 for expungement. See Lickiss v. FINRA, 208 Cal. App. 4th 1125, 1135  
21 (2012).

22 Two federal district courts have squarely addressed the issue  
23 of whether federal question jurisdiction exists where a broker-  
24 dealer is seeking expungement of disclosures on CRD under a state  
25 law cause of action; both courts concluded that no such  
26 jurisdiction exists. In re Lickiss, 2011 WL 2471022 (N.D. Cal.  
27 2011); Spalding v. FINRA, 2013 WL 1129396 (N.D. Ga. 2013).

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1           **A. Exclusive Jurisdiction**

2           Section 78aa of the Securities Exchange Act provides that  
3 "[t]he district courts of the United States ... shall have  
4 exclusive jurisdiction ... of all suits in equity and actions at  
5 law brought to enforce any liability or duty created by this title  
6 [15 U .S.C. §§ 78a et seq.] or the rules and regulations  
7 thereunder." 15 U.S.C. § 78aa(a). This includes violations of  
8 duties established by FINRA's rules. Sparta Surgical Corp. v. NASD,  
9 Inc., 159 F.3d 1209, 1212 (9th Cir. 1998); see also Dobbins v.  
10 NASD, 2007 WL 2407081, at \*1-2 (N.D. Ohio 2007). However, it is  
11 clear that there is not exclusive federal question jurisdiction  
12 under the Securities Exchange Act for *all* claims relating to  
13 securities. See Matsushita Elec. Indus. Co., Ltd. v. Epstein, 516  
14 U.S. 367, 383 (1996); Dennis v. Hart, 724 F.3d 1249, 1254 (9th Cir.  
15 2013). In order for there to be exclusive federal jurisdiction over  
16 Plaintiff's claims, Plaintiff's lawsuit must seek to enforce a  
17 "liability" or "duty" created by the Securities Exchange Act.

18           Plaintiff's complaint seeks expungement, as well as related  
19 declaratory relief. There is no "duty to expunge" under FINRA  
20 rules. See Lickiss, 2011 WL 2471022, at \*3. FINRA has a duty to  
21 "collect[] and retain[] information" pursuant to the Securities  
22 Exchange Act. 15 U.S.C. § 78o-3(i)(1)(A). Plaintiff, however, does  
23 not seek enforcement of this duty; he is not bringing this action  
24 to compel FINRA to "collect" or "retain" information. See Lickiss,  
25 2011 WL 2471022, at \*3. In both Lickiss and this case, FINRA has  
26 failed to point to any other specific "duty" under the Act that

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1 Plaintiff's cause of action for expungement seeks to enforce.<sup>1</sup>  
2 Therefore, there is no exclusive federal question jurisdiction over  
3 Plaintiff's cause of action for expungement.

4 **B. Substantial Issues of Federal Law**

5 Plaintiff brings a state law claim for expungement and a  
6 related declaratory relief claim.<sup>2</sup> Therefore, in order for this  
7 Court to have jurisdiction over the action, there must be  
8 substantial federal issues involved in the state law claim.  
9 "Federal jurisdiction over a state law claim will lie if a federal  
10 issue is: (1) necessarily raised, (2) actually disputed, (3)  
11 substantial, and (4) capable of resolution in federal court without  
12 disrupting the federal-state balance approved by Congress." Gunn v.  
13 Minton, - U.S. -, 133 S. Ct. 1059, 1065 (2013).

14 Defendant argues that Plaintiff's claims for expungement and  
15 declaratory relief "are based on FINRA's failure to follow its  
16 rules and fulfill its regulatory responsibilities." (Opp. to Motion  
17 to Remand, p. 18.) Defendant bases this argument primarily on  
18 Plaintiff's claim for declaratory relief, which "seeks a  
19 declaration that the conduct alleged is not a 'sales practice  
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21 <sup>1</sup>FINRA argues that the Court should understand the "duty"  
22 requirement for exclusive jurisdiction more broadly, encompassing  
23 FINRA's general duty to maintain CRD and retain or expunge the  
24 disclosures listed there. (Opp. to Mtn. to Remand, pp. 14-16.)  
However, Plaintiff's complaint does not seek to challenge FINRA's  
maintenance of the database. Therefore, the Court finds that  
Plaintiff's complaint does not seek to enforce any "duty" of FINRA.

25 <sup>2</sup>To the extent that Defendant argues that there is a federal  
26 cause of action for expungement, Plaintiff's complaint will still  
27 not be construed as asserting a federal cause of action. "When a  
28 claim can be supported by alternative and independent theories -  
one of which is a state law theory and one of which is a federal  
law theory - federal question jurisdiction does not attach because  
federal law is not a necessary element of the claim." Rains v.  
Criterion Sys., Inc., 80 F.3d 339, 346 (9th Cir. 1996).

1 violation' and was reported as such in error of law." (Complaint ¶  
2 104.) Defendant argues that this raises a substantial issue of  
3 federal law because Plaintiff "bases his Complaint on claims that  
4 FINRA has failed to fulfill its duties . . . and on facial  
5 challenges to the validity and propriety of FINRA's SEC-approved  
6 rules." (Opp., p. 21.)

7 Contrary to Defendant's characterization of Plaintiff's  
8 claims, however, Plaintiff does not claim that FINRA failed to  
9 fulfill any particular duty or that FINRA's rules are facially  
10 invalid. Plaintiff does allege that FINRA refused to remove a  
11 disclosure item from his CRD record and that FINRA is required to  
12 do so pursuant to their own rules, but he does not seek a  
13 declaration or other direct relief for FINRA's failure to remove  
14 the disclosures. (Complaint ¶ 34.) For example, Plaintiff does not  
15 seek a declaration that FINRA violated their duty to remove the  
16 disclosures. As a result, no determination need be made by the  
17 Court as to whether FINRA was required to remove the disclosures  
18 under the circumstances in determining whether expungement is  
19 appropriate in this case. See Spalding, 2013 WL 1129396, at \*5.  
20 Plaintiff's cause of action for expungement therefore does not  
21 raise a substantial issue of federal law, as a determination of  
22 whether expungement is appropriate in this particular case is a  
23 fact-specific analysis. See Gunn, 133 S. Ct. at 1066 ("[I]t is not  
24 enough that the federal issue be significant to the particular  
25 parties in the immediate suit... The substantiality inquiry ...  
26 looks instead to the importance of the issue to the federal system  
27 as a whole.").

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1 **IV. Conclusion**

2 For the foregoing reasons, Plaintiff's Motion to Remand is  
3 GRANTED. Therefore, the Court has no jurisdiction over this action  
4 and does not reach Defendant's Motion to Dismiss. Said motion is  
5 VACATED. (Dkt. 12.) The matter is remanded to the Los Angeles  
6 Superior Court, Central District, Case No. BC516756.

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8 IT IS SO ORDERED.

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11 Dated: November 19, 2013

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DEAN D. PREGERSON  
United States District Judge

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