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**United States District Court
Central District of California**

LISA STONE-MOLLOY,
Plaintiff,
v.
MIDLAND FUNDING LLC,
Defendant.

Case № 2:15-cv-08017-ODW (AJWx)

ORDER REMANDING ACTION

I. INTRODUCTION

On October 13, 2015, Defendant Midland Funding LLC timely removed this action to federal court based on arising-under jurisdiction. After reviewing Defendant’s Notice of Removal, it does not appear that Plaintiff Lisa Stone-Molloy’s claims arise under federal law, and thus the Court lacks subject matter jurisdiction. Consequently, this action is **REMANDED** to state court.¹

II. BACKGROUND

On September 2, 2015, Plaintiff filed her Complaint in the Los Angeles Superior Court’s small claims division. (ECF No. 1-1.) The sole substantive

¹ After carefully considering Defendant’s Notice of Removal and the documents filed in support thereof, the Court deems the matter appropriate for *sua sponte* decision. *United Inv’rs Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004).

1 allegation in the Complaint is as follows: “re-age of actual first date of delinquency to
2 a new account-opened date 20 months newer.” (Compl. ¶ 3a.) Plaintiff seeks
3 damages in the amount of \$2,500, which she attributes to “credit decline actual
4 damages.” (*Id.* ¶ 3c.) Plaintiff served Defendant with the Complaint on September
5 14, 2015. (Not. of Removal ¶ 2.) On October 13, 2015, Defendant timely removed
6 the action to this Court. (ECF No. 1.)

7 **III. LEGAL STANDARD**

8 Federal courts have subject matter jurisdiction only as authorized by the
9 Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *see also Kokkonen v.*
10 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in state court
11 may be removed to federal court only if the federal court would have had original
12 jurisdiction over the suit. 28 U.S.C. § 1441(a). Federal courts have original
13 jurisdiction where an action arises under federal law, *id.* § 1331, or where each
14 plaintiff’s citizenship is diverse from each defendant’s citizenship and the amount in
15 controversy exceeds \$75,000, *id.* § 1332(a).

16 The removal statute is strictly construed against removal, and “[f]ederal
17 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
18 instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking
19 removal bears the burden of establishing federal jurisdiction. *Durham v. Lockheed*
20 *Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006). The court may remand the action
21 *sua sponte* “[i]f at any time before final judgment it appears that the district court
22 lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c); *see also United Inv’rs Life*
23 *Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004).

24 **IV. DISCUSSION**

25 Defendant asserts two bases for arising-under jurisdiction: (1) Plaintiff’s claim
26 arises under the federal Fair Credit Reporting Act (FCRA), and (2) Plaintiff’s claim
27 contains a substantial federal ingredient because the FCRA preempts any state law
28 claim that Plaintiff might be alleging. (Not. of Removal ¶¶ 5–7.) The Court is not

1 convinced by either argument.

2 As to the first basis, it is far from clear that Plaintiff is stating a claim under the
3 FCRA. “The presence or absence of federal-question jurisdiction is governed by the
4 ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only
5 when a federal question is presented on the face of the plaintiff’s properly pleaded
6 complaint. The rule makes the plaintiff the master of the claim; he or she may avoid
7 federal jurisdiction by exclusive reliance on state law.” *Caterpillar Inc. v. Williams*,
8 482 U.S. 386, 392 (1987) (citation omitted). Plaintiff does not cite a federal statute or
9 use language that substantially tracks the language of a federal statute, and thus it is
10 not clear that she is trying to state a claim under federal law. Plaintiff could be
11 attempting to state, for example, a negligence claim. That FCRA preemption may
12 ultimately require Plaintiff to bring her claims under federal law does not mean that
13 the Complaint as currently pleaded states a claim under federal law.

14 *Washington v. Direct Gen. Ins. Agency*, 130 F. Supp. 2d 820, 824 (S.D. Miss.
15 2000) is distinguishable. There, the plaintiff purported to assert a claim under the
16 “Fair Faith and Credit Act.” The court found that this was actually a claim under the
17 FCRA because there was “no Mississippi nor federal statute known as the ‘Fair Faith
18 and Credit Act’ [and] a review of the provisions of the FCRA makes it obvious that
19 the complaint seeks to assert a claim under the FCRA.” *Id.* In contrast, Plaintiff here
20 does not identify any statute (real or not), and the sparse allegations in her Complaint
21 make it impossible to determine with any certainty what governing law she relies on.
22 To the extent *Washington* holds that removal is proper because the claim must
23 ultimately be brought under the FCRA, this Court declines to follow it—such a rule
24 would run afoul of the Supreme Court’s characterization of the plaintiff as the “master
25 of the claim.” *Caterpillar Inc.*, 482 U.S. at 392.

26 As to the second basis, a case is not removable simply because a defendant
27 intends to assert a defense of federal preemption to a state law claim. “[I]t is now
28 settled law that a case may *not* be removed to federal court on the basis of a federal

1 defense, including the defense of pre-emption, . . . even if both parties concede that
2 the federal defense is the only question truly at issue.” *Id.* at 393. The narrow
3 exception to this rule is the “complete preemption” doctrine, which “occurs only
4 when Congress intends not merely to preempt a certain amount of state law, but also
5 intends to transfer jurisdiction of the subject matter from state to federal court.”
6 *Ansley v. Ameriquest Mortgage Co.*, 340 F.3d 858, 862 (9th Cir. 2003) (citation
7 omitted). “Complete preemption, however, arises only in ‘extraordinary’ situations,”
8 and the Supreme Court has identified only three federal statutes that qualify under this
9 doctrine—and the FCRA is not one of them. *Id.* Indeed, the fact that the FCRA’s
10 preemption clause, 15 U.S.C. § 1681t(b)(1)(F), contains two savings clauses—
11 including one for claims under California Civil Code section 1785.28(a)—counsels
12 strongly against complete preemption, and may even exempt Plaintiff’s claim from
13 preemption altogether. FCRA preemption thus does not confer arising-under
14 jurisdiction.

15 **V. CONCLUSION**

16 When a case is removed from state court to federal court, the federal court must
17 resolve all ambiguities in favor of remanding the case. Here, there are sufficient
18 reasons to doubt the propriety of removal. Thus, the Court **REMANDS** the action to
19 the small claims division of the Los Angeles Superior Court, Van Nuys, Case No.
20 15V07688. The Clerk of the Court shall close the case.

21 **IT IS SO ORDERED.**

22
23 October 19, 2015

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26 **OTIS D. WRIGHT, II**
27 **UNITED STATES DISTRICT JUDGE**