

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	CV 17-3063 PSG MRW	Date	July 18, 2017
Title	Moshe Yhudai v. Mortgage Electronic Registration Systems, Inc. <i>et al.</i>		

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Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy Hernandez

Not Reported

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

**Proceedings (In Chambers):    Order GRANTING Plaintiff’s Motion to Remand and RENDERING MOOT Defendants’ Motion to Dismiss**

Before the Court is Plaintiff Moshe Yhudai’s motion to remand. Dkt. # 15 (“Mot.”). Also before the Court is Defendants’ motion to dismiss the complaint. Dkt. # 7. The Court finds the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local R. 7-15. After considering the papers submitted by the parties, the Court GRANTS the motion to remand and RENDERS MOOT Defendants’ motion to dismiss.

**I.    Background**

On March 22, 2017, Plaintiff Moshe Yhudai (“Plaintiff”) filed this suit in California state court against Defendants Mortgage Electronic Registration Systems, Inc. (“MERS”), Select Portfolio Servicing, Inc. (“SPS”); Deutsche Bank National Trust Company as trustee, on behalf of the holders of the Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-2 (“Deutsche Bank”), and Recontrust Company N.A. *See* Dkt. # 1-1 (“Complaint” or “Compl.”). This suit is based on allegations that Defendants engaged in unlawful lending and foreclosure practices in connection with a mortgage obtained by Plaintiff. *See id.* The Complaint lists the following causes of action: (1) violation of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.17(a); (2) fraud-intentional misrepresentation; (3) violation of California Corporations Code §§ 2100 *et seq.*; (4) fraud-concealment; (5) fraud-violation of California Penal Code § 115.5; (6) quiet title; and (7) declaratory and injunctive relief. *Id.*

On April 24, 2017, pursuant to provisions of 28 U.S.C. § 1441(b), MERS, SPS, and Deutsche Bank (together, “Defendants”) removed the case to this Court on the basis of federal jurisdiction under 28 U.S.C. § 1331. *See* Dkt. # 1, *Notice of Removal* (“NOR”) ¶ 3. Defendants assert that Plaintiff’s “first causes of action, beginning at paragraph 16 and ending at paragraph

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33, arise out of alleged violations of federal law.” *Id.* ¶ 4. Shortly thereafter, Defendants filed a motion to dismiss the Complaint. Dkt. # 7. On May 24, 2017, Plaintiff filed a motion to remand the case to state court on grounds that removal was improper because no federal question appears on the face of the Complaint. *See Mot.* 5. For the reasons stated below, the Court finds it lacks subject matter jurisdiction over this case and remands it to state court.

II. Legal Standard

Federal courts are courts of limited jurisdiction. *See Gunn v. Minton*, 133 S. Ct. 1059, 1064 (2013). Under 28 U.S.C. § 1441, a defendant may remove a civil action from state court to federal district court only if the federal court has subject matter jurisdiction over the case. *See Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 163 (1997) (“The propriety of removal thus depends on whether the case originally could have been filed in federal court.”). The case shall be remanded to state court if at any time before final judgment it appears a removing court lacks subject matter jurisdiction. *See* 28 U.S.C. § 1447(c); *Int’l Primate Prot. League v. Adm’rs of Tulane Educ. Fund*, 500 U.S. 72, 87 (1991). There is a strong presumption against removal jurisdiction, so the party seeking removal always has the burden of establishing that removal is proper. *See Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992)). If there is any doubt as to the propriety of removal, federal jurisdiction must be rejected. *Gaus*, 980 F.2d at 567.

III. Discussion

Plaintiff asserts only state causes of action in his complaint, including an alleged violation of California’s Fair Debt Collections Practices Act, known as the Rosenthal Act (“State FDCPA”). *See Compl.* ¶¶ 16–33; *Mot.* 8. Defendants contend that Plaintiff’s claims nonetheless “arise under” federal law because Plaintiff’s first cause of action for violation of the State FDCPA includes allegations that Defendant violated the federal Fair Debt Collection Practices Act (the “Federal FDCPA”). *See* Dkt. # 20 (“Opp.”) at 3.

To determine whether a claim made under a state law cause of action nevertheless “arises under” federal law, a court must consider whether the claim “necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved of federal and state judicial responsibilities.” *See Grable & Sons Metal Prods. v. Eng’g & Mfg.*, 545 U.S. 308, 314 (2005). A “substantial” federal question is one that “involves the interpretation of a federal statute that actually is in dispute in the litigation and is so important that it ‘sensibly belongs in federal court.’” *Eastman v. Marine Mech. Corp.*, 438

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F.3d 544, 552 (6th Cir. 2006) (quoting *Grable & Sons*, 545 U.S. at 314). Thus, as the Supreme Court has noted, “federal issue” is not “a password opening federal courts to any state action embracing a point of federal law.” *Grable & Sons*, 545 U.S. at 314.

As Plaintiff rightly notes, the State FDCPA creates state law liability for violations of the Federal FDCPA. *See Mot.* 7–8; Cal. Civ. Code § 1788.17. It also incorporates by reference the statutory remedies provided for under the Federal FDCPA. *See id.* As a result, where a party has violated the Federal FDCPA, it has generally also violated the State FDCPA and is subject to an additional award of the statutory damages described in the Federal FDCPA. *See id.* Here, it is apparent from the manner in which Plaintiff has pleaded his first cause of action that he is alleging State FDCPA liability and refers to federal law only to the extent that it has been incorporated by reference in the State FDCPA. The Complaint does not appear to involve the interpretation of a federal statute, and Defendants do not argue otherwise. Above all, perhaps, the Court cannot say that the claim implicates federal issues in such a manner that Plaintiff’s suit “sensibly belongs in federal court.” *Eastman*, 438 F.3d 544 at 552 (internal quotation omitted). Therefore, because there is no “substantial” federal question raised by Plaintiff’s claims, this suit should be remanded to state court for lack of federal subject matter jurisdiction.<sup>1</sup>

IV. Conclusion

In light of the foregoing, the Court GRANTS Plaintiff’s motion and REMANDS the action to state court. Defendants’ motion to dismiss is hereby RENDERED MOOT.

**IT IS SO ORDERED.**

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<sup>1</sup> In his motion to remand, Plaintiff explicitly states that “all seven (7) causes of action are based on state law.” *Mot.* 8. To the extent Plaintiff’s Complaint may not have been clear that the violations of the Federal FDCPA were only incorporated by reference into the State FDCPA, the Court notes that Plaintiff is a *pro se* litigant and his pleadings are thus held to “less stringent standards.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *see also Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (stating that “in the case of a pro se litigant, the law requires the Court to act with ‘great leniency’ litigant when evaluating his compliance with the technical rules of civil procedure.”). Therefore, the Court finds that Plaintiff asserted a state cause of action only.