

E-Filed 12/13/10

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION
9

10 JUDITH REIMANN and MICHAEL
11 DaRONCO, individually and on behalf of
all others similarly situated,

No. C 10-04156 RS

Plaintiffs,

**ORDER GRANTING MOTION TO
REMAND AND DENYING MOTIONS
FOR JUDGMENT ON THE
PLEADINGS AS MOOT**

v.

14 ERICA L. BRACHFELD, THE
15 BRACHFELD LAW GROUP, P.C.,
16 MIDLAND FUNGING LLC, MIDLAND
CREDIT MANAGEMENT, LLC, and
17 MIDLAND FUNDING NCC-2 CORP., and
DOES 1-100, inclusive,

Defendants.
18 _____/

I. INTRODUCTION

21 Plaintiffs Judith Reimann and Michael DaRonco filed this class action suit in Alameda
22 County Superior Court for alleged violations of California's Rosenthal Fair Debt Collection
23 Practices Act ("Rosenthal Act") and California's Unfair Competition Law ("UCL"). Plaintiffs
24 contend that defendants Erica L. Brachfeld and The Brachfeld Law Group ("BLG") engaged in
25 illegal debt collection practices on behalf of defendants Midland Funding, Midland Credit
26 Management, and Midland Funding NCC-2 (collectively "Midland"). Defendants removed the case
27 to this Court, claiming that plaintiffs' claims raise substantial issues of federal law involving
28 interpretation of the Fair Debt Collection Practices Act ("FDCPA"). Plaintiffs dispute defendants'

No. C 10-04156 RS
ORDER GRANTING MOTION TO REMAND

1 characterization of their state law claims and move to remand the case to state court based on lack of
2 subject matter jurisdiction. Additionally, defendants filed two motions for judgment on the
3 pleadings, one by Brachfeld and BLG and a second by the Midland defendants. Pursuant to Civil
4 Local Rule 7-1(b), the motions are suitable for disposition without oral argument. For the reasons
5 stated below, plaintiffs’ motion to remand is granted and the motions for judgment on the pleadings
6 are denied as moot.

7 II. BACKGROUND

8 Midland Funding sued Reimann and Midland Funding NCC-2 sued DaRonco to collect
9 alleged debts owed on defaulted credit card accounts that the Midland defendants acquired.
10 Reimann contends that BLG sent collection letters (“dunning” letters) and filed suit on behalf of
11 Midland Funding in Alameda Superior Court without prior meaningful attorney involvement. After
12 she retained counsel who made an appearance in the case, BLG dismissed the collection action.
13 DaRonco also claims that BLG filed suit on behalf of Midland Funding NCC-2 in El Dorado
14 Superior Court without prior meaningful attorney involvement. He maintains he was never served
15 and was unaware of the suit until after Midland Funding NCC-2 obtained a default judgment. He
16 also alleges that the request for default judgment was accompanied by an affidavit containing false
17 assertions, including that the affiant, an agent of Midland, had personal knowledge of the account at
18 issue. Based on these allegations, plaintiffs assert that all defendants except Brachfeld violated the
19 Rosenthal Act and all defendants violated the UCL. Their Rosenthal Act claim relies, at least in
20 part, on California Civil Code section 1788.17, which incorporates the prohibitions and remedies of
21 the FDCPA including 15 U.S.C. sections 1692e, 1692f, and 1692k.

22 III. LEGAL STANDARD

23 A defendant may remove to federal court “any civil action brought in a State court of which
24 the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a).
25 Accordingly, removal jurisdiction exists where a case filed in state court presents a federal question
26 or involves diversity of citizenship and meets the statutory amount in controversy. *See* 28 U.S.C. §§
27 1331, 1332. Courts strictly construe the removal statute against finding jurisdiction and the
28 defendant bears the burden of establishing the basis for removal. *Provincial Gov’t of Marinduque v.*

1 *Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009) (citations omitted). Where doubt exists
2 regarding the right to remove an action, it should be resolved in favor of remand to state court. *See*
3 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

4 A plaintiff may not avoid removal jurisdiction by omitting federal law that is necessary to
5 his complaint or by “casting in state terms a claim that can be made only under federal law.” *Sparta*
6 *Surgical Corp. v. NASD*, 159 F.3d 1209 (9th Cir. Cal. 1998) (citations omitted). Thus, under the
7 artful pleading doctrine, a court may “delve beyond the face of the state court complaint” in
8 determining whether the exercise of federal question jurisdiction is proper. *Lippit v. Raymond*
9 *James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (internal quotations and citations
10 omitted). A state law claim “arises under” federal law when it necessarily raises a stated federal
11 issue that is “actually disputed and substantial.” *Grable & Sons Metal Prods. Inc. v. Darue Eng’g &*
12 *Mfg.*, 545 U.S. 308, 314, (2005). Federal law must do more than shape the court’s interpretation of
13 a plaintiff’s state law claim; “federal law must be *at issue*.” *Int’l Union of Operating Eng’rs v.*
14 *County of Plumas*, 559 F.3d 1041, 1045 (9th Cir. 2009) (emphasis in original).

15 IV. DISCUSSION

16 California Civil Code section 1788.17 provides that “every debt collector collecting or
17 attempting to collect a consumer debt” must comply with sections 1692b to 1692j of the FDCPA.
18 At issue in the motion to remand is whether plaintiffs’ claim incorporating section 1692e, which
19 prohibits false or misleading representations by debt collectors, necessarily implicates a substantial
20 federal question. Specifically, section 1692e(3) proscribes false representations “that any individual
21 is an attorney or that any communication is from an attorney.” Under federal law, an attorney who
22 regularly engages in the collection of consumer debt, even through litigation, is a “debt collector,”
23 subject to the FDCPA. *See Heintz v. Jenkins*, 514 U.S. 291, 299 (1995). Thus, some federal courts,
24 including district courts in California, have held that section 1692e(3) is violated, even if a
25 communication is “from” an attorney, if there was no meaningful attorney involvement. *See, e.g.,*
26 *Clomon v. Jackson*, 988 F.2d 1314, 1320 (2d Cir. 1993) (finding violation of 1692e(3) where
27 “collection letters were not ‘from’ [attorney] in any meaningful sense of that word”); *Irwin v.*
28 *Mascott*, 112 F. Supp. 2d 937, 948-50 (N.D. Cal. 2000); *Newman v. Checkrite California, Inc.*, 912

1 F. Supp. 1354, 1382-83 (E.D. Cal. 1995); *Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456,
2 1460-61 (C.D. Cal. 1991).

3 While California’s Rosenthal Act incorporates sections of the FDCPA, it retains one
4 difference significant to the dispute here. The Rosenthal Act expressly excludes attorneys from the
5 definition of “debt collector.” See Cal. Civ. Code § 1788.2(c) (“The term ‘debt collector’ means any
6 person who, in the ordinary course of business, regularly, on behalf of himself or herself or others,
7 engages in debt collection. The term . . . does not include an attorney or counselor at law.”).
8 Therefore, as plaintiffs admit, if they were to bring a “meaningful involvement” claim, *i.e.*, a section
9 1693e(3) claim, against Brachfeld, they would have to do so directly under the FDCPA and not
10 through the Rosenthal Act. Plaintiffs, however, explicitly exclude Brachfeld from their Rosenthal
11 Act claim.

12 Defendants nonetheless argue that any section 1693e(3) claim against the BLG firm raises a
13 substantial question of federal law. They contend that California’s attorney exclusion also applies to
14 law firms, relying on one recent case from the Southern District of California. See *Owings v. Hunt*
15 *& Henriques*, No. 08cv1931-L(NLS), 2010 U.S. Dist. LEXIS 91819, at *6 (S.D. Cal. Sept. 3, 2010).
16 This Court, however, has held that law firms are not shielded from liability under the Rosenthal Act.
17 See *Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541, 547-48 (N.D. Cal. 2005) (“Since the
18 legislature specifically excluded attorneys from the statute but was silent on law firms, this Court
19 presumes that the legislature did not intend to exclude law firms.”); *Navarro v. Eskanos & Adler*,
20 No. C 06-02231 WHA, 2007 U.S. Dist. LEXIS 15046, at * 12-13 (N.D. Cal. Feb. 20, 2007); *Owens*
21 *v. Brachfeld*, No. C 07-04400 JF, 2008 U.S. Dist. LEXIS 63701, at *8 (N.D. Cal. Aug. 19, 2008);
22 see also *Robinson v. Managed Accounts Receivable Corp.*, 654 F. Supp. 2d 1051, 1061 (C.D. Cal.
23 2009). Therefore, plaintiffs’ section 1693e(3) claim may be brought against BLG under the
24 Rosenthal Act and it is not, as defendants argue, a claim that exists only under federal law.

25 Even if, as defendants insist will happen, plaintiffs borrow a “meaningful involvement
26 doctrine” from FDCPA cases in arguing their Rosenthal Act claim, there is no disputed and
27 substantial federal law at issue. Defendants attempt to identify a substantial question by claiming
28 that district courts in California are divided over the existence and scope of any purported standard

1 for adequate attorney involvement. In the case on which they rely, however, the court granted
2 summary judgment for the attorney defendant on a section 1692e claim, because “the undisputed
3 evidence show[ed] that he at least reviewed Plaintiff’s file and personally made every decision
4 related to the [collection action].” *Taylor v. Quall*, 471 F. Supp. 2d 1053, 1062 (C.D. Cal. 2007).
5 The *Taylor* court characterized the circumstances present in *Clomon*, *Irwin*, *Newman*, and *Masuda*
6 as involving “mass mailing of collection letters containing the signatures of attorneys who never
7 reviewed the involved debtors’ individual files.” *Id.* at 1061. While the *Taylor* court referred to the
8 holdings of those cases as “limited,” it did not call into question the courts’ conclusions that section
9 1692e(3) required meaningful attorney involvement, but merely distinguished the facts present in its
10 case. Thus, defendants in this action fail to establish that plaintiffs’ Rosenthal Act claim states a
11 substantial federal question. Furthermore, as defendants contend plaintiffs’ UCL claim is derivative
12 of the alleged Rosenthal Act violations, they do not raise any additional arguments for jurisdiction
13 based on that claim. In short, defendants have not met their burden of raising a federal issue
14 sufficient to confer removal jurisdiction over plaintiffs’ state law complaint.

15 V. CONCLUSION

16 Plaintiffs’ motion to remand is granted. Pursuant to 28 U.S.C. section 1447(c), they also
17 request attorneys’ fees and costs associated with removal and a hearing to determine the appropriate
18 amount. Plaintiffs’ request is denied and the case is remanded to Alameda County Superior Court
19 without further proceedings. Defendants’ motions for judgment on the pleadings are denied, as the
20 Court is without jurisdiction to consider them.

21
22 IT IS SO ORDERED.

23
24 Dated: 12/13/10

25 
26 _____
27 RICHARD SEEBORG
28 UNITED STATES DISTRICT JUDGE