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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DOUGLAS J. CAMPION,

No. C 12-0443 RS

Plaintiff,

v.

**ORDER GRANTING MOTION TO
DISMISS WITHOUT LEAVE TO
AMEND AND DENYING MOTION
FOR SANCTIONS**

OLD REPUBLIC INTERNATIONAL
CORPORATION, et al.,

Defendants.

I. INTRODUCTION

This putative class action is brought against Old Republic International Corporation (“Old Republic”), alleged to be an “insurance holding company with no operations of its own,” and five of its subsidiaries. The subsidiaries purportedly are in the business of providing various “real estate settlement services,” such as title insurance, mortgage insurance, escrow services, and home warranty plans. Plaintiff Douglas J. Campion alleges, in somewhat conclusory terms, that Old Republic and/or the subsidiaries have entered into “servicer provider agreements” with real estate brokers and agents, and attorneys, whereby such persons are paid illegal kickbacks in exchange for referring customers to the Old Republic subsidiaries. Campion proposes two classes of plaintiffs: (1) a nationwide class of home purchasers asserting claims against all defendants under the Real Estate Settlement Procedures Act, 12 U.S.C §§ 2601 *et seq.* (“RESPA”) and California Business and

1 Professions Code §§ 17200 (“UCL”) arising from any type of settlement services provided by
2 defendants, and (2) a class of California home purchasers asserting UCL claims against defendant
3 Old Republic Home Protection Company, Inc. (“ORHPC”) arising from purchases of home
4 warranty plans.

5 Campion’s only alleged interactions with any of the defendants, however, involve his
6 acquisition of a home warranty plan from ORHPC, in connection with a home purchase in which he
7 acted as his own broker. Accordingly, whether viewed either as a lack of standing or as a failure to
8 state a claim, Campion has no basis to pursue claims arising from the alleged practices of other
9 defendants in connection with their provision of various types of real estate settlement services to
10 customers across the nation. Characterizing this as a class action does not eliminate the requirement
11 that Campion must have suffered injury from the alleged practices giving rise to the claims of
12 putative class members.

13 As to ORHPC, the deficiency in the complaint likewise could be characterized as either a
14 lack of standing or a failure to state a claim. Campion individually has failed to state a claim
15 because he has not alleged facts showing that his transaction involved a referral and a kickback. To
16 the extent the complaint alleges that *other* persons have been referred to ORHPC for home warranty
17 plans in exchange for kickbacks, Campion lacks standing to pursue such claims. Accordingly, the
18 complaint must be dismissed. Because admissions Campion has made in other litigation against
19 ORHPC demonstrate that he cannot in good faith amend to cure the pleading deficiencies, leave to
20 amend will not be granted. Finally, while presenting a close question, defendants’ motion for
21 sanctions under Rule 11 of the Federal Rules of Civil Procedure will be denied.

22
23 **II. BACKGROUND**

24 Campion alleges that he closed escrow on a residence in San Diego, California in 2007.
25 Although the complaint includes some vague and conclusory general allegations regarding alleged
26 real estate settlement services “defendants” purportedly provided to Campion in connection with his
27 purchase, the only factual allegation of any particular service provided to him is an averment that he
28 received a home warranty plan from ORHPC. Similarly, apart from generalized conclusions,

1 570 (2007)). A claim is facially plausible “when the pleaded factual content allows the court to
2 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

3 Defendants characterize their motion as one brought primarily under Rule 12(b)(1) of the
4 Federal Rules of Civil Procedure, arguing that *Campion’s* lack of standing deprives the Court of
5 subject matter jurisdiction. A motion to dismiss for lack of subject matter jurisdiction may be made
6 on the grounds that the lack of jurisdiction appears from the “face of the complaint,” or may be
7 based on extrinsic evidence apart from the pleadings. *Warren v. Fox Family Worldwide, Inc.*, 328
8 F.3d 1136, 1139 (9th Cir. 2003); *McMorgan & Co. v. First Cal. Mortgage Co.*, 916 F. Supp. 966,
9 973 (N.D. Cal. 1995). As defendants point out, however, where the jurisdictional issue is whether
10 the plaintiff has standing, dismissal is also appropriate under Rule 12(b)(6) absent sufficient factual
11 allegations in the complaint, which, if proven, would confer standing. *Sacks v. Office of Foreign*
12 *Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006).

13 Defendants Old Republic and Mississippi Valley Title Insurance Company also seek
14 dismissal under Rule 12(b)(2), contending they are not subject to *personal* jurisdiction in this forum.
15 The exercise of personal jurisdiction is appropriate only where a defendant has certain “minimum
16 contacts” with the forum state such that maintenance of the suit does not offend traditional notions
17 of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316
18 (1945). In judging minimum contacts, a court properly focuses on “the relationship among the
19 defendant, the forum, and the litigation.” *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). The party
20 seeking to invoke the jurisdiction of the federal court shoulders the burden of establishing that such
21 jurisdiction exists. *Data Disc, Inc. v. Systems Technology Assoc.*, 557 F.2d 1280, 1285 (9th Cir.
22 1977).

24 IV. DISCUSSION

25 A. Motion to dismiss

26 The gravamen of *Campion’s* complaint is that each of the Old Republic subsidiaries
27 routinely receives referrals from real estate brokers, agents, and attorneys, of customers who are
28 purchasing homes and who need real estate settlement services such as title insurance, mortgage

1 insurance, escrow services, and/or home warranty services. The subsidiaries then provide such
2 services to the home purchasers for fees, and kickback a portion of those fees to the referring
3 parties. The referrals are made, and the kickbacks paid, pursuant to pre-existing agreements
4 between Old Republic and/or the individual subsidiaries on the one hand,² and the referring agents,
5 brokers, and attorneys, on the other hand. Setting aside the question of whether some or all of those
6 allegations might be too conclusory, the complaint arguably states a claim that theoretically could be
7 made on behalf of the putative classes under RESPA and/or the UCL.

8 The fatal flaw in the pleading is that Champion has advanced no facts to show that he
9 individually engaged in any such transaction with any defendant. As to all the subsidiaries other
10 than ORHPC, there are no facts that they had any involvement with Champion whatsoever.³ As to
11 ORHPC, there are no facts showing that (1) any real estate agent, broker, or attorney referred
12 Champion to ORHPC, or (2) it paid a kickback to any real estate agent, broker, or attorney in
13 connection with the home warranty plan it issued to him.⁴ If Champion had a basis for proceeding
14 against ORHPC, there might be grounds to include Old Republic, were he also able to allege with
15 factual support that Old Republic set up the referral and kickback agreements. As he cannot do so,
16 no viable claim is available against Old Republic.

18 ² The allegation that Old Republic itself entered into such agreements is not entirely consistent with
19 the allegation that it is only a holding company with no operations of its own.

20 ³ Champion argues that the inclusion of those defendants can be justified under a theory that they all
21 operated under a common scheme, or as agents or alter egos of each other. The facts pleaded are
22 insufficient to support any such theory. If Champion had a viable claim against ORCHP, perhaps
leave to amend such facts would be warranted, but in light of the analysis below, the issue is moot.

23 ⁴ Defendants argue Champion has also failed to allege that he even paid a fee for the home warranty
24 plan. It is reasonable to infer, however, that ORHPC did not provide the plan for free. Even
25 assuming the cost of the plan was nominally paid by the home seller in the transaction rather than
26 Champion, that alone would not deprive him of standing. *See Bradford v. WR Starkey Mortgage,*
27 *LLP*, No. 06-cv-0086, 2008 U.S. Dist. LEXIS 118427 (N.D. Ga. Feb. 22, 2008) (“Plaintiff may not
28 have ultimately paid the wire and tax service fees, but he was unquestionably “charged” them by
defendant. Plaintiff escaped paying the allegedly violative fees only by virtue of a contractual
arrangement with the seller, who agreed to contribute \$5,000.00 to closing costs. The charge, itself,
is a sufficient injury in fact under the statute.”)

1 While Rule 23 of the Federal Rules of Civil Procedure permits a plaintiff to bring claims on
2 behalf of other similarly situated persons, it does not eliminate the threshold requirement that the
3 plaintiff have suffered a cognizable injury of the type being asserted on behalf of the class. Nor, in
4 this instance, is the issue simply one of “typicality” that might prevent a class from being certified
5 or disqualify Champion from serving as its representative. There may very well be, at least in theory,
6 a class of persons (or two classes) who have claims of the type alleged in the complaint. Champion
7 has pleaded no facts, however, showing that *he* holds such claims.

8 Champion insists he has standing under *Edwards v. First American Corp.*, 610 F.3d 514 (9th
9 Cir. 2010) because he has pleaded he paid an inflated price for his home warranty plan as a result of
10 “defendants’” alleged practices of paying kickbacks. In *Edwards*, however, there was no question
11 that the plaintiff had adequately alleged her title insurance policy was placed with a particular
12 insurer pursuant to an improper referral and kickback arrangement. *Id.* at 516. The district court
13 dismissed the complaint because plaintiff could not allege she had suffered an injury-in-fact, given
14 that the price she paid for the policy was set by state law, and therefore was unaffected by the illegal
15 kickback. *Id.* The Ninth Circuit reversed, holding that the statutory RESPA violation was sufficient
16 to confer standing on plaintiff whether or not she suffered a direct monetary loss resulting from the
17 referral and kickback. *Id.* at 518.

18 *Edwards* is of no assistance to Champion. His protestations to the contrary notwithstanding,
19 he has pleaded no facts showing that his plan was placed with ORHPC as the result of any referral,
20 or that anyone was paid a kickback in connection with his plan.

21 Although not entirely clear, it appears Champion’s theory may be that because ORHPC
22 *ordinarily* pays kickbacks on home warranty plans (allegedly), the price it charges for *all* home
23 warranty plans is inflated to account for those payments. While creative, any such theory is not
24 tenable. RESPA damages are recoverable by persons who paid for settlement services “involved in
25 the violation,” 12 U.S.C. 2607(d)(2), and the statute does not generally regulate overcharges. *See*
26 *Martinez v. Wells Fargo Home Mortg. Inc.*, 598 F.3d 549, 554 (9th Cir. 2010). *Edwards* certainly
27 did not involve such an attenuated theory, and Champion has offered no other authority suggesting
28 that it would support recovery under RESPA.

1 Campion urges that even in the event he cannot pursue a RESPA claim, his allegation that he
2 and similarly-situated others paid inflated prices for home warranty plans is sufficient to support a
3 claim under the UCL. As any such claim would involve only Campion’s second proposed class
4 (California purchasers asserting a violation of California law by ORHPC, a California company),
5 there would be no independent basis for jurisdiction in this Court either under the Class Action
6 Fairness Act or through the existence of a federal question. Accordingly, the Court will refrain from
7 determining the ultimate viability of that claim and instead will dismiss it without prejudice. *See* 28
8 U.S.C. § 1367(c)(3) (providing that a district court may decline to exercise supplemental jurisdiction
9 where it “has dismissed all claims over which it has original jurisdiction”); *Carnegie-Mellon Univ.*
10 *v. Cohill*, 484 U.S. 343, 351 (1988) (“[I]n the usual case in which all federal-law claims are
11 eliminated before trial, the balance of factors to be considered under the pendent jurisdiction
12 doctrine-judicial economy, convenience, fairness, and comity-will point toward declining to
13 exercise jurisdiction over the remaining state-law claims.”).

14 The balance of the complaint must be dismissed for the reasons explained above.⁵ Although,
15 with certain exceptions, the Court may not look beyond the four corners of the complaint in
16 evaluating whether it states a claim, there is no prohibition against considering other matters of
17 record when determining whether or not to grant leave to amend. Here, in connection with their
18 motion for sanctions, defendants have submitted Campion’s deposition testimony given in another
19 action brought by him against ORHPC in which he alleged it had breached its obligations under the
20 home warranty plan. In that matter, Campion testified that he acted as his own broker in the
21 underlying home purchase, and that he personally selected the ORHPC home protection plan after a
22 comparison shopping process. Given that testimony under oath, Campion cannot now allege in
23 good faith that he was referred to ORHPC by an agent, broker, or attorney, or that ORHPC paid a

24 _____
25 ⁵ Dismissal of Old Republic and Mississippi Valley Title Insurance Company is also warranted on
26 the additional basis that they lack minimum contacts with this forum to support personal jurisdiction
27 over them. Campion’s only argument to the contrary is his contention that they can be found
28 subject to jurisdiction for having “purposefully directed” wrongful conduct at residents of this
forum. Such a theory would only potentially be available had Campion alleged sufficient facts to
support his assertion of a conspiracy or joint scheme.

1 kickback to such a person in connection with his purchase of the plan. Accordingly, the dismissal
2 will be without leave to amend.

3
4 B. Motion for sanctions

5 Defendants' motion seeking to impose sanctions under Rule 11 presents a close call. The
6 Rule requires, among other things, for counsel to certify that "the claims, defenses, and other legal
7 contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying,
8 or reversing existing law or for establishing new law." Campion's attempt to bring claims against
9 defendants other than ORHPC is particularly dubious, and even his assertion of a RESPA claim is
10 problematic, given that he knew his own purchase of a home warranty contract did not involve a
11 referral and kickback. Nevertheless, while Campion did not plead sufficient facts to support any
12 sort of joint liability or conspiracy, his notion that all of the Old Republic entities were engaged in a
13 common scheme is not so beyond the pale as to warrant sanctions. Likewise, his apparent theory
14 that he paid an inflated price as the result of the alleged referral and kickback practices is sufficient,
15 albeit barely, to preclude a conclusion that the action was wholly frivolous from the outset.
16 Accordingly, the motion for sanctions will be denied.

17
18 V. CONCLUSION

19 The motion to dismiss is granted, without leave to amend. As to the first claim for relief
20 (the UCL claim against ORHPC) and that portion of the declaratory relief claim relating thereto
21 only, the dismissal is without prejudice to refile in state court. A separate judgment will issue.
22 The motion for sanctions is denied.

23
24 IT IS SO ORDERED.

25 Dated: 7/10/12

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27 
28 RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE