

1 this Court has discretion to remand the case now that Huston has abandoned her federal
2 claims, but they differ on how they think the Court should exercise that discretion.

3 “[I]n the usual case in which all federal-law claims are eliminated before trial, the
4 balance of factors to be considered under the pendent jurisdiction doctrine – judicial
5 economy, convenience, fairness, and comity – will point toward declining to exercise
6 jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S.
7 343, 350 n.7 (1988). A court may also “consider whether the plaintiff has engaged in any
8 manipulative tactics when it decides whether to remand a case.” *Id.* at 357.

9 Here, the first four factors are either neutral or weigh in favor of remand. The Court
10 has expended no resources on this case except for evaluating Huston’s two motions to
11 remand, and judicial economy therefore favors remand. Likewise, the operative complaint
12 now seeks adjudication only of questions arising under state law, so comity also favors
13 remand. Convenience and fairness are neutral factors, as neither this Court nor the Superior
14 Court for the County of Contra Costa are significantly more or less convenient for the parties,
15 and the parties have presented no reason why either forum would be more or less fair.

16 Affinity’s primary argument against remand is that Huston’s delay in seeking to
17 remove the federal claims from this case “suggests that [her] decision to amend her
18 complaint is merely an exercise in forum shopping.” Opp’n at 4 n.1. This Court disagrees.
19 As the Ninth Circuit has explained:

20 Filing federal claims in state court is a legitimate tactical decision
21 by the plaintiff: it is an offer to the defendant to litigate the
22 federal claims in state court. The defendant is not obligated to
23 remove; rather, he has the choice either to submit to state court
24 resolution of his claims, or to assert his right to a federal forum.
25 If the defendant rejects the plaintiff’s offer to litigate in state
26 court and removes the action, the plaintiff must then choose
between federal claims and a state forum. Plaintiffs in this case
chose the state forum. They dismissed their federal claims and
moved for remand with all due speed after removal. There was
nothing manipulative about that straight-forward tactical
decision. . . .

27 *Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 491 (9th Cir. 1995). Here, Huston did not seek
28 to dismiss her federal claims “with all due speed after removal,” and instead did not do so

1 until approximately ten weeks after removal and after the Court denied her first motion to
2 remand. Nonetheless, the Court does not attribute this behavior to manipulative tactics;
3 rather, Huston's counsel appears to have misunderstood the law governing removal. Based
4 on Huston's filings, it appears that her counsel honestly – but mistakenly – believed that
5 having state law claims be “the focus of the complaint” would defeat any attempt at removal,
6 notwithstanding the presence of a claim arising under federal law. *E.g.*, Nov. 7, 2012 Mot. to
7 Remand at 3. Under counsel's mistaken interpretation of the law, dismissal of Huston's
8 federal claims would have been unnecessary to obtain remand. Once the Court rejected
9 Huston's legal theory and gave her the choice between federal claims and a state forum,
10 Huston promptly chose the state forum by filing an amended complaint devoid of federal
11 claims. The Court does not find this behavior to be evidence of forum shopping or other
12 manipulative tactics that would weigh against remand.

13 Finally, while Affinity correctly observes that it incurred attorneys' fees in removing
14 this case and opposing Huston's first remand motion, which the Court ultimately found to be
15 without merit, Affinity did not request an award of fees and costs under Rule 11 of the
16 Federal Rules of Civil Procedure or any other law. Moreover, that a defendant incurred
17 attorneys' fees does not weigh against remand where, as here, the plaintiff's counsel did not
18 engage in manipulative tactics.

19
20 **CONCLUSION**

21 With good cause appearing for the above reasons, the Court exercises its discretion to
22 GRANT Huston's motion to remand. This matter is hereby remanded to the Superior Court
23 of California for the County of Contra Costa. The Clerk shall close the file.

24
25 **IT IS SO ORDERED.**

26
27 Dated: 02/14/13



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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT