

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTORIA MARY HOEKSTRA,
Plaintiff,

No. C 12-06328 CRB

ORDER REMANDING CASE

v.

STATE FARM GENERAL INSURANCE
COMPANY,
Defendant.

Now before the Court is a fully briefed motion to remand filed by Plaintiff Victoria Mary Hoekstra. Having carefully considered the party’s papers and the available record, the Court GRANTS the motion. The Court does so without oral argument. Civil L.R. 7-1(b).

I. INTRODUCTION

Hoekstra alleges that, on October 4, 2011, she suffered a “sudden moth infestation” in her apartment. Compl. (dkt. 1, Ex. A) ¶ 5. The moths destroyed “clothing, a large wool rug, curtains and throws” allegedly worth \$16,500. *Id.* ¶¶ 5-6. Hoekstra had renter’s insurance through Defendant State Farm General Insurance Company (“State Farm”), so she filed an “inquiry claim” to ascertain whether her policy covered moth damage. Hoekstra alleges that State Farm representatives told her at first that her policy would cover the damage, only later to reverse course and deny her claim. By that time, however, Hoekstra had begun to purchase replacement items, had released her landlord from liability, and had converted her

1 inquiry into an official claim, which would raise her renter’s insurance premium. See
2 generally id. ¶¶ 11-21.

3 Following the denial of her claim, Hoekstra demanded from State Farm payment of
4 \$16,000. Id. ¶ 23. State Farm did not meet her demand and, on October 3, 2012, Hoekstra
5 filed a complaint in Alameda County Superior Court against State Farm and twenty Does.
6 Hoekstra’s complaint sets forth five causes of action: (1) breach of contract, (2) breach of
7 contract/agreement to cover loss, (3) breach of the covenant of good faith and fair dealing,
8 (4) fraud and deceit, and (5) unfair business practices. On October 12, 2012, Hoekstra
9 attempted to serve State Farm through an insurance agent’s Vallejo office, rather than
10 through State Farm’s official agent for process. Not. of Removal (dkt. 1) ¶ 2. Nevertheless,
11 State Farm received a copy of the complaint and, on November 15, 2012, agreed with
12 Hoekstra’s counsel to respond to the complaint by December 14, 2012, thereby waiving
13 formal service. See id. ¶ 3. On December 13, 2012, State Farm timely removed the case to
14 this Court.¹

15 **II. DISCUSSION**

16 Hoekstra’s fifth cause of action for “unfair business practices” is the key to the instant
17 motion to remand, since State Farm removed Hoekstra’s case to this Court on the basis of a
18 federal question purportedly raised there. See Not. of Removal ¶ 5.² Whether Hoekstra’s
19 fifth cause of action actually does raise a federal question, or merely makes illustrative
20 reference to a federal statute, is the crux of the parties’ dispute. The Court, however, need
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22 ¹ Defendants have only thirty days to remove following receipt of a complaint “through service
23 or otherwise.” 28 U.S.C. § 1446(a). However, the thirty-day clock does not start to run until the
24 plaintiff perfects service. Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48
(1999).

25 ² Paragraph five of State Farm’s Notice of Removal states, in pertinent part:

26 This action is a civil action over which this court has original jurisdiction under
27 the provisions of 28 U.S.C. section 1441, 28 U.S.C. section 1331, and 28
28 U.S.C. section 1337, in that it presents a federal question. Plaintiff’s Fifth
Cause of Action in the complaint is founded on a claim or right arising under
the laws of the United States, namely unfair or deceptive business practices
under 15 U.S.C. section 45(a)(1) of the Federal Trade Commission Act.

1 not pass on all the arguments raised by the parties because the result will be the same
2 whether the Court grants or denies Hoekstra’s motion: Hoekstra’s case will end up back in
3 state court.

4 Hoekstra’s fifth cause of action cites to three statutes: California’s Unfair Business
5 Practices Act (“UBPA”), Cal. Bus. & Prof. Code §§ 17500 et seq., California’s Unfair
6 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq., and the Federal Trade
7 Commission Act (“FTCA”), 15 U.S.C. § 45(a)(1).³ All three statutes are consumer
8 protection laws proscribing unfair competition and business practices. Hoekstra argues that
9 her reference to 15 U.S.C. § 45(a)(1) is merely illustrative and not intended to stand as an
10 independent cause of action. Mot. at 5-6. She acknowledges, correctly, that Congress
11 created no private right of action to enforce § 45(a)(1) and that she therefore lacks standing
12 to do so. See id. at 6. The FTCA rests that “initial remedial power solely in the Federal
13 Trade Commission.” Dreisbach v. Murphy, 658 F.2d 720, 730 (9th Cir. 1981) (citing
14 Carlson v. Coca-Cola Co., 483 F.2d 279 (9th Cir. 1973)). Hoekstra points out that, since her
15 federal claim is obviously deficient, if the Court were to deny her motion to remand, it would
16 ultimately have to dismiss her FTCA “claim” as a matter of law. The Court then would be
17 left to exercise supplemental jurisdiction over her four remaining state-law claims. Mot. at

18
19 ³ The single substantive paragraph of Hoekstra’s fifth cause of action alleges:

20 Defendants’ actions violate many aspects of the California Unfair Business
21 Practices Act which under Civil Code [sic] section 17,500 prohibits false
22 advertising and false and misleading statements concerning property and
23 professional services; and which under Civil Code [sic] section 17,200
24 prohibits unfair, unlawful or fraudulent business acts or practices and unfair,
25 deceptive, untrue or misleading statements concerning property and
26 professional services. Defendants’ actions also violate many aspects of the
27 UAPD, section 5(a)(1) of the Federal Trade Commission Act which prohibits
28 “unfair or deceptive acts or practices” with broad applicability to consumer
29 transactions and is aimed at protecting consumer deception and abuse in the
30 marketplace. 15 U.S.C. section 45(a)(1). Finally, the California Business Prof.
31 Code section 17,020 [sic] prohibits “any unlawful, unfair or fraudulent
32 business act or practice.”

33 Compl. ¶ 46. At first blush, the paragraph seems to cite to four statutes. However, the second and
34 fourth citations are duplicative: Both refer to California Business and Professions Code section
35 17200. Moreover, the references to the California Civil Code should refer to the Business and
36 Professions Code. See Mot. (dkt. 8) at 4 n.1 (acknowledging errors).

1 6-7. State Farm does not dispute this point, but frames it as a reason for the Court to *retain*
2 jurisdiction. Opp’n (dkt. 9) at 5-6.

3 The point, though, cuts the other way. When a federal court has dismissed all the
4 claims over which it has original jurisdiction, the exercise of supplemental jurisdiction is
5 discretionary. 28 U.S.C. § 1367(c). In the absence of diversity or some other jurisdictional
6 “hook,” district courts frequently decline to exercise supplemental jurisdiction over cases that
7 present only state-law issues. And, where such a case was removed to federal court rather
8 than filed there initially, not only is remand authorized, but usually “the balance of factors to
9 be considered [. . .]—judicial economy, convenience, fairness, and comity—will point
10 toward” remand. Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988). Moreover,
11 it is well-settled that there is a “strong presumption against removal jurisdiction” and that
12 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the
13 first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

14 Here, State Farm’s right to removal was doubtful in the first instance. Given the
15 overall cast of the complaint, Hoekstra’s reference to the FTCA is most plausibly read as
16 gesturing toward a body of law that bolsters her state-based unfair competition claims.
17 California courts construing the UCL commonly look to federal cases construing the FTCA.
18 See, e.g., Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163,
19 185-86 (Cal. 1999) (in seminal case construing “unfairness” prong of UCL, “turn[ing] for
20 guidance to the jurisprudence” of FTCA); People ex rel. Mosk v. Nat’l Research Co. of Cal.,
21 201 Cal. App. 2d 765, 773 (Cal. Ct. App. 1962) (federal cases construing FTCA are “more
22 than ordinarily persuasive” for California courts construing UCL). Hoekstra’s reference to
23 the FTCA is best read as a mere reference to this body of law, especially when her complaint
24 lacks class allegations and seeks damages in an amount more suggestive of small-claims than
25 federal jurisdiction. In sum, the doubtfulness of the presence of a federal question on the
26 face of Hoekstra’s complaint, by itself, warrants remand. Gaus, 980 F.2d at 566.

27 Even if remand were not warranted, however, and the Court were to retain
28 jurisdiction, it would do so only to dismiss Hoekstra’s purported FTCA “claim” as a matter

1 of law. At that point, having only supplemental jurisdiction over the case, the Court would
2 remand the matter to state court, as Cohill counsels. Denying the motion to remand would
3 result in nothing more than a pointless and expensive boondoggle to federal court. As the
4 matter stands, State Farm risks spending more trying to keep this case in federal court than it
5 would have spent settling Hoekstra's claim in the first place.

6 Plaintiff Victoria Mary Hoekstra's motion to remand is GRANTED. The motion
7 hearing set for February 22, 2013 is VACATED. The Court ORDERS the Clerk to remand
8 this action to the California Superior Court in and for the County of Alameda, where it bore
9 case number RG12 650527.

10 **IT IS SO ORDERED.**

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Dated: February 12, 2013



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE