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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DINAH PHAM, PAULA BERNAL, MARY F.
BAILEY, on their behalf and on behalf of
those similarly situated,

No. C 12-06579 JSW

Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A., et al.

Defendants.

**ORDER GRANTING
PLAINTIFFS' MOTION TO
REMAND AND DENYING
PLAINTIFFS' REQUEST FOR
ATTORNEYS' FEES**

Now before the Court is the motion to remand the action to state court filed by Plaintiffs Dinah Pham, Paula Bernal, and Mary F. Bailey on behalf of themselves and a class of similarly situated persons (collectively "Plaintiffs"). The Court finds this matter is appropriate for disposition without oral argument and it is hereby deemed submitted. *See* N.D. Civ. L.R. 7-1(b). Accordingly, the hearing set for April 26, 2013 is HEREBY VACATED. Having carefully considered the parties' arguments and the relevant legal authority, the Court hereby GRANTS Plaintiffs' motion.

BACKGROUND

On October 22, 2012, Plaintiffs filed a putative class action against JPMorgan Chase Bank, Wells Fargo Bank ("Bank Defendants"), Money Mutual, Effective Marketing Solutions, Aaron Shoaf, Montel Williams ("Money Mutual Defendants"), Cash Yes, Gateway Holdings Group, LLC, Horizon Opportunities Group, SCS Processing, LLC, Payday Valet, and VIP PDL

1 Services, LLC (“Offshore Lender Defendants”) (collectively “Defendants”). (First Amended
2 Complaint (“FAC”) ¶¶ 1-17.) Plaintiffs allege that the Offshore Lender Defendants, based
3 primarily in the Caribbean or Central America, and unlicensed by the state of California,
4 entered into illegal deferred deposit transactions (colloquially “payday loans”) with the
5 Plaintiffs. (*Id.* ¶¶ 19, 34-38.) Plaintiffs also allege that Money Mutual, a payday lender referral
6 service, brokered some of these loans. (*Id.* ¶¶ 59-78.) Plaintiffs further allege that the Bank
7 Defendants withdrew money from the Plaintiffs’ checking accounts and electronically
8 transmitted it to bank accounts belonging to the Offshore Lender Defendants. (*Id.* ¶¶ 83-89.)

9 Based on these allegations, Plaintiffs bring claims against Defendants for violations of
10 the California Deferred Deposit Transaction Law (“CDDTL”), aiding and abetting violations of
11 the CDDTL, violations of California’s Unfair Competition Law (“UCL”), and negligence. (*Id.*
12 ¶¶ 24-133.) Plaintiffs seek relief in the form of compensatory damages, cancellation of unpaid
13 debt, punitive damages, attorney fees, a declaratory judgment, and injunctive relief. (FAC,
14 Prayer for Relief ¶¶ 1-13.)

15 On December 31, 2012, Defendants filed a notice of removal pursuant to 28 U.S.C. §§
16 1332, 1441, 1446, and 1453. (Notice of Removal ¶¶ 4-12.) Specifically, Defendants argue that
17 this case fulfills the requirements of the Class Action Fairness Act of 2005, which grants federal
18 district courts original jurisdiction over certain class action suits. (*Id.* ¶ 4.)

19 ANALYSIS

20 A. Request for Judicial Notice.

21 Defendants request that this Court take judicial notice of two documents filed in *Paula*
22 *Bernal, et al. v. Southwestern & Pacific Finance, Inc. DBA Check ‘N Go, et al.*, Case No.
23 CV12-05797-SBA, a case pending in the Northern District of California: (1) Notice of Removal
24 of Defendant Southwestern & Pacific Specialty Finance, Inc., filed November 13, 2012; and (2)
25 Joint Case Management Statement, filed February 1, 2013. (Request for Judicial Notice
26 (“RJN”), Exs. A, B.)

27 Plaintiffs do not dispute the accuracy of the documents attached to Defendants’ request,
28 and the documents are of the type which this Court may properly take judicial notice. *See Lee*

1 *v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (“a court may take judicial notice
2 of ‘matters of public record’”). Accordingly, the Court takes judicial notice of the documents
3 attached to Defendants’ request.

4 **B. Legal Standards Relevant to Removal Jurisdiction.**

5 “[A]ny civil action brought in a State court of which the district courts of the United
6 States have original jurisdiction, may be removed by the defendant ... to the district court of the
7 United States for the district and division embracing the place where such action is pending.”
8 *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 7-8 (1983) (citation
9 omitted); *see also* 28 U.S.C. § 1441. However, federal courts are courts of limited jurisdiction.
10 *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). District Courts
11 have original jurisdiction over “all civil actions where the matter in controversy exceeds the
12 sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different
13 states.” 28 U.S.C. § 1332(a)(1).

14 The burden of establishing federal jurisdiction for purposes of removal is on the party
15 seeking removal, and the removal statute is construed strictly against removal jurisdiction.
16 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v. Miles, Inc.*,
17 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt
18 as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566. In order to determine
19 whether the removing party has met its burden, a court may consider the contents of the
20 removal petition and “summary-judgment-type evidence.” *Valdez*, 372 F.3d at 1117.

21 The Class Action Fairness Act (“CAFA”) provides that district courts have original
22 jurisdiction over any class action in which (1) the amount in controversy exceeds \$5,000,000,
23 (2) any plaintiff class member is a citizen of a state different from any defendant, (3) the
24 primary defendants are not states, state officials, or other government entities against whom the
25 district court may be foreclosed from ordering relief, and (4) the number of plaintiffs in the
26 class is at least 100. 28 U.S.C. §§ 1332(d)(2), (d)(5).

1 Here, to demonstrate the amount in controversy, Defendants average the trebled
2 compensatory damages and outstanding debt the three class representative allege in the first
3 amended complaint, and then multiply that number by 1,000, the number of persons Plaintiffs
4 allege comprise the class. (*See Opp. Br.* at 6-10.) Defendants then use this number as a starting
5 point to calculate punitive damages and attorneys' fees, which are also added to the amount in
6 controversy. (*Id.* at 10-13.) However, such a calculation, which extrapolates from three class
7 representatives to an entire class is unsupported by underlying facts, is speculative, and falls
8 short of meeting the preponderance of the evidence burden. *See Abrego Abrego v. The Dow*
9 *Chemical Co.*, 443 F.3d 676, 689 (9th Cir. 2006); *Roth v. Comerica Bank*, 799 F. Supp. 2d
10 1107, 1128-1130 (C.D. Cal. 2010). Specifically, extrapolating in this way, Defendants assume
11 that the vast majority of class members received more than one loan. To support their
12 argument, Defendants cite an article written by an economist at the Federal Reserve Bank of
13 Kansas City. (*See Opp. Br.* at 6-7.) An article, on its own, is not the sort of evidence that
14 demonstrates an amount in controversy by a preponderance of the evidence.¹ *See Lewis v.*
15 *Verizon Communications, Inc.*, 627 F.3d 395, 399-400 (9th Cir. 2010); *Roth*, 799 F. Supp. 2d at
16 1119-1120 (finding that defendant cannot assume any particular frequency as basis for its
17 jurisdictional calculations, but must provide evidence from its own records to support its
18 estimates). Moreover, "federal jurisdiction must be rejected if there is any doubt as to the right
19 of removal in the first instance." *See Gaus*, 980 F.2d at 566. For these reasons, the Court finds
20 that Defendants have not met their burden to demonstrate that the amount in controversy

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23 ¹ In support of their petition for removal, Defendants also attach a notice of removal
24 and a joint case management statement from another case pending in the Northern District of
25 California, to which plaintiff Bernal is a party. (*See RJN*, Exs. A, B.) Defendants argue that
26 because Bernal did not contest federal jurisdiction in that case, Bernal may not do so here.
27 (*See Opp. Br.* at 2 n.2.) However, the Court finds that documents from another case,
28 premised upon different facts and evidence not before this Court, do not satisfy the
preponderance of the evidence standard required to show the amount in controversy here.
See Gaus, 980 F.2d at 567 (holding that a party must set forth the underlying facts supporting
its assertion that the amount in controversy exceeds the applicable dollar value).

1 exceeds \$5,000,000 by a preponderance of the evidence. Thus, the Court remands this action to
2 the state court.²

3 **E. Plaintiffs' Request for Attorneys' Fees Is Denied.**

4 Pursuant to 28 U.S.C. § 1447(c), Plaintiffs request an award of attorneys' fees and costs
5 incurred as a result of Defendants' allegedly improper removal. "An order remanding the case
6 may require payment of just costs and any actual expenses, including attorney fees, incurred as
7 a result of removal." 28 U.S.C. § 1447(c). To determine whether to award costs and fees under
8 section 1447(c), this Court has a "great deal of discretion." *Morris v. Bridgestone/Firestone,*
9 *Inc.*, 985 F.2d 238, 240 (9th Cir. 1993). Although it was not ultimately persuaded by
10 Defendants' arguments, the Court does not find that removal was frivolous or motivated by bad
11 faith. The Court therefore declines to exercise its discretion to award Plaintiffs' fees and costs
12 under section 1447(c).

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16 ² In their reply, Plaintiffs also argue that their sixth cause of action for violation of
17 the UCL does not implicate a substantial federal question, which would independently
18 provide this Court with jurisdiction over the action. Plaintiffs premise their sixth cause of
19 action for violation of the UCL on the allegation that the Bank Defendants made withdrawals
20 from Plaintiffs' bank accounts in order to pay the Offshore Lender Defendants, in violation
21 of the Electronic Funds Transfer Act ("EFTA"), a federal law. Although the Defendants did
22 not brief the matter in their opposition, this Court independently finds that the Plaintiffs'
23 sixth cause of action for violation of the UCL does not create a substantial federal question.

24 "The mere presence of a federal issue in a state cause of action does not automatically
25 confer federal-question jurisdiction." *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804,
26 813 (1986). Instead, the cause of action must raise a substantial federal question. *Grable &*
27 *Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005). In
28 *Empire Health Choice Assurance, Inc., v. McVeigh*, the Supreme Court found that a federal
question could be deemed substantial if it presented a "nearly 'pure issue of law'" and its
resolution disposed of the case. 547 U.S. 677, 700-701 (2006). In this case, resolution of the
federal issue—that is, whether the Bank Defendants violated the EFTA—would require a fact-
intensive inquiry as opposed to a determination of a pure matter of law. Accordingly, the
Court finds that the presence of a federal issue does not confer subject matter jurisdiction.
See also Nevada v. Bank of America Corp., 672 F.3d 661, 675 (9th Cir. 2012) (finding that
the use of a federal statute as a predicate for a state law cause of action does not necessarily
transform that cause of action into a federal claim); *Hoekstra v. State Farm General Ins. Co.*,
No. C 12-06328 CRB, slip op. at 1-2 (N.D. Cal. Feb. 12, 2013) (finding removal doubtful
where reference to federal law was meant to bolster state-based unfair competition claims).

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CONCLUSION

For the reasons stated herein, the Court GRANTS Plaintiffs' motion to remand this action to the Superior Court for the County of Alameda and DENIES the request for attorneys' fees. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: April 10, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

