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

DOLORIS SADLOWSKI, et al.,

Plaintiffs,

v.

PETERSEN-DEAN, INC., et al.,

Defendants.

No. C 17-1601 CW

ORDER ON MOTION TO
REMAND

(Docket No. 16)

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Plaintiffs move to remand this case to state court. Defendants have filed an opposition and Plaintiffs have filed a reply. Having considered the papers submitted by the parties, the Court grants Plaintiffs' motion.

BACKGROUND

Plaintiffs make the following factual allegations in their Second Amended Complaint (2AC). Sadlowski began working for Petersen-Dean, Inc. in October 2004. She made complaints--it is not clear to whom--that James Peterson, the owner of both Defendants Petersen-Dean, Inc. and PD Solar, Inc., misused company funds and as a result failed to pay employees in a timely manner. Sadlowski then went on medical leave. She was terminated upon her return from leave, in August 2016. Plaintiff Shalina Jones, Sadlowski's daughter, began working for PD Solar in March 2007. She too was terminated in August 2016.

In February 2017, Plaintiffs filed this lawsuit in Alameda County Superior Court in California alleging violation of the California Fair Employment and Housing Act (FEHA); violation of

1 California Labor Code section 1102.5 prohibiting retaliation
2 against whistleblowers; wrongful termination; violation of
3 California Labor Code sections 201 and 203 concerning payment of
4 wages after termination; and violation of the federal Family and
5 Medical Leave Act (FMLA). In early March 2017, Plaintiffs filed
6 their First Amended Complaint (1AC), which retained their federal
7 causes of action.

8 On March 24, Defendants removed. On April 3, Plaintiffs'
9 counsel transmitted a draft 2AC to Defendants' counsel dropping
10 the FMLA claim and informing her that he intended to move for
11 remand. The same day, Defendants' counsel responded that she
12 believed the case would still be subject to federal jurisdiction
13 because the Employee Retirement Income Security Act (ERISA)
14 completely preempts state law claims based on an ERISA
15 administrator's failure promptly to provide benefits.

16 On May 1, Plaintiffs filed the operative 2AC, including
17 neither the FMLA claim nor the claim Defendants' counsel believed
18 preempted by ERISA. The 2AC includes five claims of violations of
19 California's FEHA; a claim of violation of California's Family
20 Rights Act; a claim of whistleblower retaliation in violation of
21 California Labor Code section 1102.5; and wrongful termination.
22 Plaintiffs furthermore assert that neither seeks damages that
23 would involve a federal question or federal preemption.
24 Plaintiffs moved for remand on May 9.

25 DISCUSSION

26 A defendant may remove a civil action filed in state court to
27 federal district court so long as the district court could have
28 exercised original jurisdiction over the matter. 28 U.S.C.

1 § 1441(a). Title 28 U.S.C. § 1447 provides that if at any time
2 before judgment it appears that the district court lacks subject
3 matter jurisdiction over a case previously removed from state
4 court, the case must be remanded. 28 U.S.C. § 1447(c). On a
5 motion to remand, the scope of the removal statute must be
6 strictly construed. See Gaus v. Miles, Inc., 980 F.2d 564, 566
7 (9th Cir. 1992). "The 'strong presumption' against removal
8 jurisdiction means that the defendant always has the burden of
9 establishing that removal is proper." Id. Courts should resolve
10 doubts as to removability in favor of remanding the case to state
11 court. Id.

12 The Ninth Circuit has "long held that post-removal amendments
13 to the pleadings cannot affect whether a case is removable,
14 because the propriety of removal is determined solely on the basis
15 of the pleadings filed in state court." Williams v. Costco
16 Wholesale Corp., 471 F.3d 975, 976 (9th Cir. 2006) (per curiam).
17 However, in Williams the district court retained diversity
18 jurisdiction over the case after the plaintiff dismissed the sole
19 federal claim and it was primarily on this basis that the Ninth
20 Circuit found the district court erred by remanding. Id. at 977;
21 see also Hill v. Roller, 615 F.2d 886, 889 (9th Cir. 1980)
22 (describing rule that removability is determined based on the
23 pleadings at the time notice of removal is filed as the "general
24 rule in diversity cases"). Here, Plaintiffs do not allege and
25 there does not appear to be diversity of citizenship. The court
26 in Williams went on to hold, "Any post-removal pleadings must be
27 treated just as they would be in a case originally filed in
28 federal court." 471 F.3d at 977.

1 Because the original complaint and 1AC contained a federal
2 claim, the Court has supplemental jurisdiction over Plaintiffs'
3 state-law claims, 28 U.S.C. § 1367(a), and therefore is not
4 required by 28 U.S.C. § 1447(c) to remand. Because an amended
5 complaint supersedes the original, see Valadez-Lopez v. Chertoff,
6 656 F.3d 851, 857 (9th Cir. 2011), Plaintiffs effectively
7 dismissed their federal claims when they filed their 2AC. A
8 district court has discretion to decline supplemental jurisdiction
9 when it has dismissed all claims over which it has original
10 jurisdiction. 28 U.S.C. § 1367(c); Acri v. Varian Assocs., Inc.,
11 114 F.3d 999, 1001 (9th Cir.), supplemented, 121 F.3d 714 (9th
12 Cir.), as amended (1997). "While discretion to decline to
13 exercise supplemental jurisdiction over state law claims is
14 triggered by the presence of one of the conditions in § 1367(c),
15 it is informed by the [United Mine Workers of America v. Gibbs,
16 383 U.S. 715 (1966)] values 'of economy, convenience, fairness,
17 and comity.'" Id. (citation omitted). The Supreme Court and the
18 Ninth Circuit have repeatedly held that "in the usual case in
19 which all federal-law claims are eliminated before trial, the
20 balance of factors . . . will point toward declining to exercise
21 jurisdiction over the remaining state-law claims." Acri, 114 F.3d
22 at 1001 (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,
23 350 n.7 (1988)).

24 The Gibbs factors weigh in favor of declining to exercise
25 supplemental jurisdiction over Plaintiffs' state law claims.
26 Judicial economy favors remand because the case is at a very early
27 stage. The Court has not invested significant resources in its
28 resolution and it would not take the state court long to become

1 equally familiar with it. See GlobalSantaFe Drilling Co. v. Ins.
2 Co. of State of Pa., 2006 WL 13090, at *7 (N.D. Cal.). State
3 court is no less convenient. Comity favors resolution by a state
4 court with "a surer-footed reading of applicable law." Gibbs, 383
5 U.S. at 726.

6 Defendants essentially argue fairness, complaining that
7 Plaintiffs dismissed their federal claims in order to secure
8 remand to state court, and Plaintiffs admit as much. However, at
9 least when a plaintiff did not include federal claims in "bad
10 faith or for the sole purpose of putting defendants through the
11 removal-remand procedure" and "moved for remand with all due speed
12 after removal," this is a permissible tactical decision. Baddie
13 v. Berkeley Farms, Inc., 64 F.3d 487, 490-91 (9th Cir. 1995),
14 abrogated on other grounds by Martin v. Franklin Capital Corp.,
15 546 U.S. 132 (2005). Here, Plaintiffs moved for remand
16 approximately six weeks after removal and little has happened save
17 the instant motion and Defendants' separate answers to Plaintiffs'
18 2AC. Defendants do not argue that Plaintiffs originally included
19 federal claims in bad faith.

20 The Court finds that the balance of factors weigh in favor of
21 declining supplemental jurisdiction over Plaintiffs' 2AC and
22 accordingly it will grant Plaintiffs' motion to remand.

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CONCLUSION

For the foregoing reasons, Plaintiffs' motion to remand is GRANTED (Docket No. 16). The clerk shall remand the case to the Superior Court of Alameda County.

IT IS SO ORDERED.

Dated: June 6, 2017



CLAUDIA WILKEN
United States District Judge