

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 RONALD CHINITZ, on behalf of himself  
5 and all others similar situated,

6 Plaintiff,

7 v.

8 EXPERIAN INFORMATION SOLUTIONS,  
9 INC.,

10 Defendant.

Case No. [5:17-cv-06515-EJD](#)

**ORDER TO SHOW CAUSE**

11 The instant putative class action was removed to this court by Defendant Experian  
12 Information Solutions, Inc. on the “grounds of federal question in that Plaintiff’s claims  
13 substantially implicate the laws of the United States, and the Plaintiff’s right to relief necessarily  
14 depends on resolution of substantial questions of federal law.” As it must, the court has reviewed  
15 the Notice of Removal and other relevant pleadings to determine whether Defendant has  
16 adequately established a basis for subject matter jurisdiction. See Henderson v. Shinseki, 562 U.S.  
17 428, 434 (2011) (“[F]ederal courts have an independent obligation to ensure that they do not  
18 exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional  
19 questions that the parties either overlook or elect not to press.”); see also Snell v. Cleveland, Inc.,  
20 316 F.3d 822, 826 (9th Cir. 2002) (“[A] court may raise the question of subject matter jurisdiction,  
21 sua sponte, at any time during the pendency of the action, even on appeal.”). It has not.

22 “Federal courts are courts of limited jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of  
23 Am., 511 U.S. 375, 377 (1994). “[S]ubject-matter jurisdiction refers to the court’s statutory or  
24 constitutional power to adjudicate the case.” Pistor v. Garcia, 791 F.3d 1104, 1110-11 (9th Cir.  
25 2015) (internal quotations omitted). Consistent with a federal court’s limited jurisdiction,  
26 “removal is permissible only where original jurisdiction exists at the time of removal.” Lexecon  
27 Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 43 (1998). “Where doubt regarding

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1 the right to removal exists, a case should be remanded to state court.” Matheson v. Progressive  
2 Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003); see 28 U.S.C. § 1447(c) (“If at any time  
3 before final judgment it appears that the district court lacks subject matter jurisdiction, the case  
4 shall be remanded.”).

5 When, as here, removal is based on the presence of a federal question, the court looks to  
6 the face of a well-pleaded complaint to determine whether a cause of action is created by federal  
7 law or whether the plaintiff’s right to relief necessarily depends on the resolution of a substantial  
8 question of federal law. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808 (1988)  
9 (citing Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983)).  
10 “[I]t must be clear from the face of the plaintiff’s well-pleaded complaint that there is a federal  
11 question.” Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996).

12 Looking at the complaint, it is apparent that none of Plaintiff’s causes of action are created  
13 by federal law. Indeed, each arises under provisions of the California Civil Code and California  
14 Business and Professions Code. Although a federal law is noted in the allegations, “the mere  
15 reference” does not “convert a state law claim into a federal cause of action.” Easton v. Crossland  
16 Mortg. Corp., 114 F.3d 979, 982 (9th Cir. 1997); accord Grable & Sons Metal Prods., Inc. v.  
17 Darue Eng’g & Mfg., 545 U.S. 308, 314 (2005) (explaining that § 1331 “is invoked by and large  
18 by plaintiffs pleading a cause of action created by federal law”) (“Grable”).

19 Nor is it apparent that Plaintiff’s causes of action implicate significant federal issues, such  
20 that removal is condoned by Grable and another case in the same line of authority - Merrell Dow  
21 Pharmaceuticals Inc. v. Thompson, 478 U.S. 804 (1986). To maintain such a proposition,  
22 Defendant must fit this case into the “special and small category” embraced by Grable. Empire  
23 Healthchoice Assurance, Inc. v. McVeigh, 547 U.S. 677, 699 (2006). Those cases are properly  
24 identified by answering the following question: “does a state law claim necessarily raise a stated  
25 federal issue, actually disputed and substantial, which a federal forum may entertain without  
26 disturbing any congressionally approved balance of federal and state judicial responsibility.”  
27 Grable, 545 U.S. at 314. “Recast as elements, the proponent of a ‘substantial federal question’

1 must show: (1) that the state law claim necessarily raises the federal issues identified, (2) that the  
2 federal issue is disputed and substantial, and if (1) and (2) are established, then (3) that it is  
3 appropriate in the balance of state and federal responsibility for the federal court to hear the  
4 claim.” Quildon v. Intuit, Inc., No. 5:12-cv-00859 EJD, 2012 WL 1902021, at \*4 (N.D. Cal. May  
5 25, 2012).

6 In the Notice of Removal, Defendant simply concludes without explanation that the  
7 Complaint’s reference to the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et. seq.,  
8 means that “whether Plaintiff is entitled to any relief will depend entirely on the interpretation and  
9 application of the FCRA and supporting federal regulations.” But the basis for this conclusion is  
10 not evidenced by the face of the Complaint. In fact, a close reading of Plaintiff’s allegations  
11 reveals that the reference to the FCRA in paragraphs 19 and 20 is made solely to emphasize the  
12 alleged violation of a state statute, such that neither interpretation nor application of the FCRA  
13 will be required to determine whether Plaintiff is entitled to relief. In other words, any issue that  
14 may arise under the FCRA is collateral, not necessary or substantial.

15 Because Defendant has not satisfied the obligation to affirmatively demonstrate federal  
16 subject matter jurisdiction, the court issues an order to show cause why this action should not be  
17 remanded. If Defendant does not, by **November 17, 2017**, file an amended Notice of Removal  
18 that establishes this court’s jurisdiction in a manner consistent with the preceding discussion, the  
19 court will remand this action to Santa Cruz County Superior Court. See 28 U.S.C. § 1653.

20 No hearing will be held on the order to show cause unless otherwise ordered by the court.

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**IT IS SO ORDERED.**

Dated: November 14, 2017

  
EDWARD J. DAVILA  
United States District Judge