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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RUSSEL SMITH, individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
HUNT & HENRIQUES, INC.,  
  
Defendant.

Case No.: 3:17-cv-0313-CAB-(JLB)

**ORDER OF REMAND**

Upon review of Defendant’s response to the Court Order to Show Cause, the Court is still not satisfied that it has jurisdiction over this dispute and therefore remands this case.

On December 12, 2016, Plaintiff originally filed suit in the District Court and was assigned Case Number 3:16-cv-03048-CAB-JLB (the “2016 Action”). Concerned that it lacked jurisdiction to hear the matter this Court issued an Order to Show Cause why the case should not be dismissed. [Doc. No. 4 in 3:16-cv-3048-CAB-JLB.] The deadline to respond to the order passed without Plaintiff filing a response and the Court dismissed the action without prejudice on January 4, 2017. [Doc. No. 7 in 3:16-cv-3048-CAB-JLB.]

On January 10, 2017, Plaintiff filed a complaint against Defendant in the Superior Court of the State of California. The state court complaint contains identical claims under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C § 1692 *et seq.* and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788 *et seq.*

1 as those asserted in the 2016 Action. On February 16, 2017 Defendant removed the state  
2 court action to this Court. [Doc. No. 1 in 3:17-cv-0313-CAB-JLB.] In its notice of removal  
3 Defendant attested that this Court has jurisdiction to hear this matter.

4 On March 10, 2017, citing the same jurisdictional concerns it had in the 2016 case,  
5 the Court issued an Order to Show Cause to Defendant as to why the case should not be  
6 remanded. [Doc. No. 12.] On March 24, 2017, Defendant filed its response to the order  
7 to show cause. [Doc. No. 20.] As of the date of this order, Plaintiff has not filed a response.

8 A defendant may remove any civil action from state court to federal district court if  
9 the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). “The  
10 party invoking the removal statute bears the burden of establishing federal jurisdiction.”  
11 *Etheridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988) (citation omitted).  
12 *See also Marin Gen. Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941, 944 (9th Cir.  
13 2009) (the burden of establishing federal subject matter jurisdiction falls on the party  
14 invoking removal). But, removal under 28 U.S.C. § 1441(a) still leaves the district court  
15 with the “ultimate responsibility to ensure jurisdiction lies” with it. *Polo v. Innoventions*  
16 *Int’l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016) (citing *Kelton Arms Condo. Owners Ass’n,*  
17 *Inc. v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003)).

18 If federal jurisdiction is absent from the commencement of a case, [a case] is not  
19 “properly removed” – and therefore need not “stay [] removed.”” *Polo* 833 F.3d at 1197  
20 (citing *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv.*  
21 *Workers Int’l Union v. Shell Oil Co.*, 602 F.3d 1087, 1091, 1092 n.3 (9th Cir. 2010)). *See*  
22 *also* 28 U.S.C § 1447(c)<sup>1</sup>; *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir.1996) (doubts  
23 as to whether the federal court has subject matter jurisdiction must be resolved in favor of  
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28 <sup>1</sup> 28 U.S.C. § 1447(c) specifically provides that “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”

1 remand). Remand is the correct remedy when subject matter jurisdiction is absent because  
2 “[s]tate courts are not bound by the constraints of Article III.” *Polo*, 833 F.3d at 1196.<sup>2</sup>

3 In its response, Defendant takes the position that “[i]t will be for this Court to decide,  
4 based on the parties’ submissions, whether Plaintiff has Article III standing.” But  
5 Defendant’s response simply provides a synopsis of court rulings from across the country  
6 post-*Spokeo* and fails to provide any evidence that assuages the Court’s concerns as to  
7 whether Plaintiff has suffered a sufficient concrete and particularized injury.  
8 Consequently, the Court finds that it has not been established that Plaintiff has suffered a  
9 concrete injury and that he lacks standing under Article III for his FDCPA claim.  
10 Accordingly, it is hereby ORDERED that this action is **REMANDED** to the Superior  
11 Court of the State of California. The Clerk of the Court shall close this case.

12 **IT IS SO ORDERED.**

13 Dated: April 4, 2017



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15 Hon. Cathy Ann Bencivengo  
16 United States District Judge  
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24 <sup>2</sup> To bring a suit in federal court a plaintiff must fulfill the Article III standing requirements. *See Valley*  
25 *Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 453 U.S. 464,  
26 473 (1982). The “irreducible constitutional minimum” of Article III requires that: “(1) plaintiff suffered  
27 an injury in fact, (2) the injury is fairly traceable to the challenged conduct, and (3) the injury is likely to  
28 be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)  
(quotation marks and citation omitted). The question of constitutional standing is a “threshold matter  
central to [the Court’s] subject matter jurisdiction, and the Court must assure itself that the constitutional  
standing requirements are satisfied before proceeding to the merits.” *Fulfillment Svcs Inc. v. United*  
*Parcel Svc., Inc.*, 528 F.3d 614, 618 (9th Cir. 2008).