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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MARK L. MILLER,

12 Plaintiff,

Case No.: 17cv2264-WQH-JMA

ORDER

13 v.

14 YELLOW PAGES; YP; AT&T
15 ADVERTISING; MCCARTHY,
16 BURGESS & WOLF; YP
17 ADVERTISING LP formerly
18 known as AT&T Advertising L.P.
19 doing business as AT&T
20 Advertising Solutions as Successor
21 In Interest to Pacific Bell
22 Directory; FIRST COLLECTION
23 SERVICES; “800-801-7311”;
24 “844-266-2462”; and DOES 1-
25 500, inclusive,

Defendants.

23 HAYES, Judge:

24 On November 6, 2017, Defendants Yellow Pages; YP; AT&T Advertising; YP
25 Advertising LP f/k/a AT&T Advertising d/b/a/ AT&T Advertising Solutions as successor
26 in interest to Pacific Bell Directory; McCarthy, Burgess & Wolf; and First Collection
27 Services (the “removing Defendants”) filed a Notice of Removal of Action from the
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1 Superior Court of the State of California, County of San Diego. (ECF No. 1). The Notice
2 of Removal states

3 Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction of this matter.
4 This matter is one that Defendant may remove to this Court pursuant to 28
5 U.S.C. § 1441(c) because the action is one arising under the Constitution,
6 laws, or treaties of the United States. 28 U.S.C. § 1331. More specifically,
7 Plaintiff asserts claims for violations of the United States Fair Debt Collection
8 Practices Act, 15 U.S.C. §§ 1692, *et. seq.*

9 (ECF No. 1 at 3).

10 While Plaintiff's Complaint references the FDCPA, the Complaint does not bring a
11 cause of action under the FDCPA and only asserts causes of action arising under state law.

12 On April 3, 2018, the Court issued an Order stating:

13 The removing Defendants are ORDERED TO SHOW CAUSE why this
14 action should not be remanded for lack of subject matter jurisdiction. The
15 removing Defendants shall file a response to this Order no later than April 25,
16 2018. If the removing Defendants fail to satisfy their burden of establishing
17 that subject matter jurisdiction exists, this action will be remanded to the
18 Superior Court of the State of California for the County of San Diego where
19 it was originally filed.

20 (ECF No. 10 at 3) (footnote omitted).

21 On April 25, 2018, the removing Defendants filed a response to the Order to Show
22 Cause. (ECF No. 11).

23 DISCUSSION

24 In the response to the Order to Show Cause, the removing Defendants contend that
25 subject matter jurisdiction is proper because Plaintiff asserts a claim for relief under the
26 FDCPA and seeks to recover damages under the FDCPA. The removing Defendants
27 contend that “[w]hile Plaintiff has labeled each of his claims as a state law cause of action,
28 these labels are not determinative of jurisdiction” and “Plaintiff has asserted multiple
allegations indicating that he seeks relief under the FDCPA.” *Id.* at 4. Further, the
removing Defendants assert that Plaintiff's claims raise a federal question because alleged
violations of the FDCPA form the basis of Plaintiff's state law causes of action.

1 “Unless Congress has expressly provided otherwise, a defendant may remove to
2 federal court ‘any civil action brought in a State court of which the district courts of the
3 United States have original jurisdiction.’” *Dennis v. Hart*, 724 F.3d 1249, 1252 (9th Cir.
4 2013) (quoting 28 U.S.C. § 1441(a)). “Federal courts are required sua sponte to examine
5 jurisdictional issues.” *Bernhardt v. Cty. of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002)
6 (quoting *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999)). At any
7 time during proceedings, a district court may sua sponte remand a case to state court if the
8 court lacks subject matter jurisdiction. *See* 28 U.S.C. § 1447(c) (“If at any time before
9 final judgment it appears that the district court lacks subject matter jurisdiction, the case
10 shall be remanded.”); *Kenny v. Wal-Mart Stores, Inc.*, 881 F.3d 786, 789–90 (9th Cir. 2018)
11 (“In essence, subject matter jurisdiction is the touchstone for a district court’s authority to
12 remand *sua sponte*.”). “The removal statute is strictly construed, and any doubt about the
13 right of removal requires resolution in favor of remand.” *Moore-Thomas v. Alaska Airline,*
14 *Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
15 (9th Cir. 1992)). The defendant bears the burden of establishing that removal is proper.
16 *Gaus*, 980 F.2d at 566.

17 “The presence or absence of federal-question jurisdiction is governed by the well-
18 pleaded complaint rule, which provides that federal jurisdiction exists only when a federal
19 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Wayne v.*
20 *DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (quoting *Caterpillar v.*
21 *Williams*, 482 U.S. 386, 392 (1987)). “Federal courts may exercise federal-question
22 jurisdiction over an action in two situations. First and most commonly, a federal court may
23 exercise federal-question jurisdiction if a federal right or immunity is ‘an element, and an
24 essential one, of the plaintiff’s cause of action.’” *Provincial Gov’t of Marinduque v. Placer*
25 *Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009) (quoting *Franchise Tax Bd. v. Constr.*
26 *Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 11 (1983)). “Second, a federal court may
27 have such jurisdiction if a state-law claim ‘necessarily raise[s] a stated federal issue,
28 actually disputed and substantial, which a federal forum may entertain without disturbing

1 any congressionally-approved balance of federal and state judicial responsibilities.” *Id.*
2 (quoting *Grable & Sons Metal Prod., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314
3 (2005)). “Such a federal issue must be ‘a substantial one, indicating a serious federal
4 interest in claiming the advantages thought to be inherent in a federal forum.” *Id.* at 1086–
5 87 (quoting *Grable*, 545 U.S. at 313). The “mere presence of a federal issue in a state
6 cause of action does not automatically confer federal question jurisdiction.” *Merrell Dow*
7 *Pharms., Inc. v. Thompson*, 478 U.S. 804, 813 (1986).

8 In this case, the removing Defendants assert that removal was proper based on
9 federal question jurisdiction. The removing Defendants first contend that Plaintiff asserts
10 a claim for relief under the FDCPA even though “he has labeled each of his claims as a
11 state law cause of action.” (ECF No. 11 at 4). Defendants rely on *Cox v. Superior Court*,
12 205 Cal. Rptr. 3d 188 (Ct. App. 2016) in support of their argument that Plaintiff’s labeling
13 of his causes of action is not determinative of jurisdiction. In *Cox*, a state appellate court
14 addressed whether the trial court had the authority to construe a civil complaint filed by a
15 prisoner as a habeas corpus petition. The appellate court stated that “[a] court has authority
16 to treat one type of writ petition as another type when it is procedurally appropriate to do
17 so” but held that “deeming a civil complaint to be a habeas corpus proceeding is not an
18 appropriate remedy to ensure a prisoner’s access to court when the civil complaint seeks
19 damages which are inappropriate or unavailable in a habeas corpus proceeding.” *Id.* at
20 191–92.

21 *Cox* is not binding authority on this Court and is procedurally distinguishable from
22 this case in which the Court must determine whether it can properly exercise federal subject
23 matter jurisdiction based on the allegations of Plaintiff’s well-pleaded complaint. Further,
24 Plaintiff clearly identifies each cause of action he asserts against Defendants and all arise
25 under state law. Plaintiff brings the following causes of action: negligence; breach of
26 illusory contract; fraud; violation of California’s Rosenthal Fair Debt Collection Practices
27 Act (“Rosenthal Act”), California Civil Code section 1788, et seq.; violation of California’s
28 Unfair Competition Law (“UCL”), California Business & Professions Code section 17200

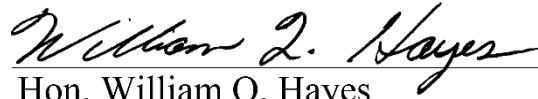
1 et seq.; and, intentional infliction of emotional distress. The Complaint does not bring a
2 cause of action under the FDCPA or any other federal cause of action. *See Caterpillar*, 482
3 U.S. at 392 (“The [well-pleaded complaint] rule makes the plaintiff the master of the claim;
4 he or she may avoid federal jurisdiction by exclusive reliance on state law.”); *Ethridge v.*
5 *Harbor House Rest.*, 861 F.2d 1389, 1395 (9th Cir. 1988) (“If the plaintiff may sue on
6 either state or federal grounds, the plaintiff may avoid removal simply by relying
7 exclusively on the state law claim”).

8 Further, Plaintiff’s state law claims do not raise a federal issue sufficient to confer
9 federal jurisdiction. The “mere presence” of the FDCPA in a state law cause of action
10 “does not automatically confer federal question jurisdiction.” *Merrell Dow*, 478 U.S. at
11 813. Plaintiff brings a cause of action under the Rosenthal Act. The California state
12 legislature incorporated provisions of the FDCPA in the Rosenthal Act. *See Cal. Civ. Code*
13 *§ 1788.17*; *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012); *Gates v. MCT*
14 *Grp., Inc.*, 93 F. Supp. 3d 1182, 1192 (S.D. Cal. 2015). Other district courts in the Ninth
15 Circuit have concluded that a reference to the FDCPA in relation to a cause of action
16 brought under the Rosenthal Act is insufficient to vest a district court with federal question
17 jurisdiction. *See, e.g., Arzaga v. Wells Fargo Bank, N.A.*, No. 16-CV-2505 AJB (WVG),
18 2016 WL 6698954, at *2 (S.D. Cal. Nov. 14, 2016); *Olson v. Wells Fargo Bank, N.A.*, 961
19 F. Supp. 2d 1149, 1150 n.2 (C.D. Cal. 2013); *Ortega v. HomEq Servicing*, No. CV 09-
20 02130MMM(DTBX), 2010 WL 383368, at *5 (C.D. Cal. Jan. 25, 2010); *Montano v. World*
21 *Wide Credit Corp.*, No. 08 CV 1183 JM (RBB), 2008 WL 11337015, at *6 (S.D. Cal. Sept.
22 30, 2008). Further, the removing Defendants have not established that Plaintiff’s causes
23 of action for negligence, breach of contract, fraud, violation of the UCL, and intentional
24 infliction of emotional distress would necessarily raise any federal issue. The Court
25 concludes that Plaintiff’s state law claims do not necessarily raise a substantial and disputed
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1 federal issue. Accordingly, federal question jurisdiction does not provide grounds for
2 removal¹ and this Court lacks subject matter jurisdiction over this action.

3 IT IS HEREBY ORDERED that pursuant to 28 U.S.C. § 1447(c), this action is
4 remanded to the Superior Court for the State of California, County of San Diego, where it
5 was originally filed and assigned case number 37-2017-00037060. The motion to change
6 venue (ECF No. 5) and motion to dismiss (ECF No. 7) are denied as moot.

7 Dated: May 23, 2018


8 Hon. William Q. Hayes
9 United States District Court

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28 ¹ Defendants do not contend that diversity jurisdiction would be proper over this action and Plaintiff does
not allege facts sufficient to support the exercise of jurisdiction over this action on diversity grounds.