

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DOUGLAS EKLUND,	}
	}
v.	}
MIDLAND FUNDING, LLC,	}
	}
Defendant.	}

No. C17-0631RSL  
ORDER TO SHOW CAUSE

On April 20, 2017, this matter was removed from state court based on both federal question and diversity jurisdiction. Plaintiff filed this action in Snohomish County Superior Court asserting claims arising out of a lawsuit defendant filed to recover a debt. Plaintiff alleges that Midland Funding, LLC, sued him approximately five years ago on a debt he does not owe. He further alleges that Midland Funding has no evidence of the alleged debt, has no standing to pursue the claim, failed to validly serve, filed outside the statute of limitations, and engaged in fraud on the court. Dkt. # 1-1 at 3-6. Plaintiff seeks the entry of judgment in the amount of "\$60,000 in damages, to include legal expenses, harassemnt [sic], hardship, mental stress, credit damages, to include 12% interest until paid in Full". Dkt. # 1-1 at 7.

A defendant in state court generally has the right to remove the case to federal court only if the case could have been filed originally in federal court (*i.e.*, on federal diversity or federal question grounds). See 28 U.S.C. § 1441(b). The general removal statute, 28 U.S.C. § 1441, is

ORDER TO SHOW CAUSE

1 construed restrictively: any doubts regarding the removability of a case will be resolved in favor  
2 of remanding the matter to state court. See, e.g., Shamrock Oil & Gas Corp. v. Sheets, 313 U.S.  
3 100, 108-09 (1941); Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1252 (9th Cir. 2006).  
4 Defendant has the burden of proving by a preponderance of the evidence that removal is  
5 appropriate under the statute. Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009).  
6 It has not met its burden.

7 Midland Funding asserts that because plaintiff has identified it as a “third party debt  
8 collector,” he must be asserting a claim under the Fair Debt Collections Practices Act  
9 (“FDCPA”), 15 U.S.C. § 1692, *et seq.* The question of whether a claim arises under federal law  
10 for purposes of 28 U.S.C. § 1331 must be determined by reference to the complaint. Mere  
11 mention of a federal statute, much less the mention of a phrase that bears some resemblance to a  
12 federal statute, is not “a password opening federal courts . . . .” Grable & Sons Metal Prods., Inc.  
13 v. Darue Eng’g & Mfg., 545 U.S. 308, 314 (2005). Rather, federal law must create the cause of  
14 action or plaintiff’s right to relief must depend on the resolution of a substantial question of  
15 federal law. Franchise Tax Bd. v. Constr. Laborers Trust, 463 U.S. 1, 27-28 (1983).

16 Plaintiff has not specifically identified the cause or causes of action he is asserting, but  
17 the facts alleged are more consistent with state malicious prosecution, fraud on the court, and/or  
18 consumer protection act claims than a claim under the FDCPA. A finding that defendants  
19 violated federal law would not be essential to any of these claims, and the Court will not assume  
20 that plaintiff is artfully pleading around a federal cause of action when there are legitimate and  
21 obvious state claims that address his situation.<sup>1</sup> Defendant has not, therefore, shown that  
22 plaintiff’s claims or right to relief necessarily depend on resolution of a question of federal law.

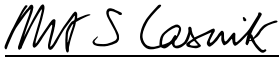
---

24 <sup>1</sup> The artful pleading doctrine prevents a plaintiff from avoiding federal jurisdiction by “omitting  
25 from the complaint federal law essential to his claim, or by casting in state law terms a claim that can be  
26 made only under federal law.” Olguin v. Inspiration Consol. Copper Co., 740 F.2nd 1468, 1472 (9th Cir.  
1984).

1 With regards to diversity jurisdiction, the citizenship of a limited liability company is  
2 determined by the citizenship of its owners/members. See Johnson v. Columbia Props.  
3 Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (holding that “like a partnership, an LLC is a  
4 citizen of every state of which its owners/members are citizens”). Midland Funding is therefore a  
5 citizen of Delaware, and diversity has been established. Midland has not, however, shown that  
6 the amount in controversy exceeds \$75,000. In removed diversity cases where there is a dispute  
7 regarding the amount in controversy, “the defendant bears the burden of actually proving the  
8 facts to support jurisdiction, including jurisdictional amount.” Gaus v. Miles, Inc., 980 F.2d 564,  
9 566-67 (9th Cir. 1992).<sup>2</sup> Here, plaintiff specifically seeks judgment in the amount of \$60,000,  
10 inclusive of attorney’s fees. Defendant has not “provide[d] evidence establishing that it is more  
11 likely than not that the amount in controversy exceeds” \$75,000. Guglielmino v. McKee Foods  
12 Corp., 506 F.3d 696, 699 (9th Cir. 2007) (internal quotation marks omitted).

13  
14 Defendant is hereby ORDERED TO SHOW CAUSE why this action should not be  
15 remanded for lack of federal jurisdiction. The Clerk of Court is directed to note this show cause  
16 proceeding on the Court’s calendar for May 5, 2017. Defendant’s response is due on or before  
17 the note date.

18 Dated this 25th day of April, 2017.

19  
20   
21 Robert S. Lasnik  
22 United States District Judge  
23

24 \_\_\_\_\_  
25 <sup>2</sup> Defendant relies on a “legal certainty” test that has been rejected in these circumstances  
26 because it “would force the federal court to exercise jurisdiction even if there was only a legal  
possibility that the amount in controversy exceeded” \$75,000. Sanchez v. Monumental Life Ins. Co.,  
102 F.3d 398, 403 (9th Cir. 1996).