

E-Filed: 7/26/16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-5111-GHK (MRWx)	Date	July 26, 2016
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Title	<i>Tamara Buck, et al. v. Karen Smith</i>
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Presiding: The Honorable	GEORGE H. KING, U.S. DISTRICT JUDGE
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Paul Songco	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

(none)

Attorneys Present for Defendants:

(none)

Proceedings: **(In Chambers) Order re:** Ex Parte Application for an Order Allowing Plaintiffs to File Their Second Amended Complaint [Dkt. 8]

This matter is before us on Plaintiffs’ above-captioned Ex Parte Application. We have considered the papers filed in support of and in opposition to this Application and deem this matter appropriate for resolution without oral argument. L.R. 7-15. As the Parties are familiar with the facts, we will repeat them only as necessary. Accordingly, we rule as follows:

Plaintiffs seek leave to file a Second Amended Complaint, which they have attached to their application. [See Dkt. 8-2.] A court should “freely give leave [to amend a pleading] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Accordingly, Plaintiffs’ Application is **GRANTED**. Plaintiffs’ Proposed Second Amended Complaint, [Dkt. 8-2], is deemed filed and served as the Second Amended Complaint as of July 21, 2016.

We reject Defendant’s argument that Plaintiffs’ Second Amended Complaint is an improper “sham pleading.” Plaintiffs’ Second Amended Complaint merely seeks to drop claims relying on federal law and add claims relying on state law. Such conduct is not manipulative or a sham. *See Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 490-91 (9th Cir. 1995) (“Filing federal claims in state court is a legitimate tactical decision by the plaintiff: it is an offer to the defendant to litigate the federal claims in state court. The defendant is not obligated to remove; rather, he has the choice either to submit to state court resolution of his claims, or to assert his right to a federal forum. If the defendant rejects the plaintiff’s offer to litigate in state court and removes the action, the plaintiff must then choose between federal claims and a state forum. Plaintiffs in this case chose the state forum. They dismissed their federal claims and moved for remand with all due speed after removal. There was nothing manipulative about that straight-forward tactical decision . . .”).

Removal of this action was premised on federal question jurisdiction—28 U.S.C. § 1331—but Plaintiffs’ Second Amended Complaint contains solely state claims. “[A] federal court [] [has] the power to hear claims that would not be independently removable even after the basis for removal jurisdiction is dropped from the proceedings.” *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th

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Cir. 1991) (internal quotation marks omitted). But, a court is “not obliged to exercise that power.” *Price v. PSA, Inc.*, 829 F.2d 871, 876 (9th Cir. 1987). “[T]he rule in this circuit is that the district court has discretion to remand the rest of the action to the state court from which it is removed.” *Id.* In the usual case, there is a preference for “declining to exercise jurisdiction over the remaining state-law claims.” *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). In light of the foregoing, Defendant is **ORDERED to show cause** in writing, within **7 days hereof**, why we should not exercise our discretion to remand this action. Failure to timely and adequately show cause as required herein shall be deemed Defendant’s admission that remand is proper. In that event, this action will be remanded to the state court from which it was removed.

IT IS SO ORDERED.

Initials of Deputy Clerk _____ : _____
PS