

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
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REDEVELOPMENT AGENCY OF THE)
CITY OF SAN BERNARDINO, a public)
entity,)
)
Plaintiff,)
)
v.)
)
JAIME ALVAREZ, et al.,)
)
Defendants.)
_____)
)
RAYMUNDO LOPEZ, CHRISTINA)
SPEER, ANTONIO YNIGUEZ,)
CARMEN SANCHEZ, MANUEL)
SANCHEZ, and GUILLERMINA)
JIMINEZ,)
)
Counterclaimants and)
Cross-claimants,)
)
v.)
)
CITY OF SAN BERNARDINO, a public)
entity, REDEVELOPMENT AGENCY)
OF THE CITY OF SAN BERNARDINO,)
a public entity,)
)
Counterdefendant and)
Cross-defendant.)
_____)

ED CV 02-142 RT (SGLx)
ORDER (1) REMANDING THE
COUNTERCLAIM AGAINST
COUNTERDEFENDANT
REDEVELOPMENT AGENCY OF THE
CITY OF SAN BERNARDINO AND THE
CROSS-CLAIM AGAINST CROSS-
DEFENDANT CITY OF SAN
BERNARDINO; AND (2) DENYING THE
MOTION BY COUNTERDEFENDANT
REDEVELOPMENT AGENCY OF THE
CITY OF SAN BERNARDINO AND
CROSS-DEFENDANT CITY OF SAN
BERNARDINO TO DISMISS THE
COUNTERCLAIM AND CROSS-CLAIM
UNDER FED. R. CIV. P. 12(b)(6)

1 The court, Judge Robert J. Timlin, has read and considered counterdefendant
2 Redevelopment Agency of the City of San Bernardino (“RDA”)’s and Cross-defendant City
3 of San Bernardino (“City”)’s (“Counterdefendant”)’s motion to dismiss
4 Counterclaimants/cross-claimants Raymundo Lopez (“Lopez”), Christina Speer (“Speer”),
5 Antonio Yniguez (“Yniguez”), Carmen Sanchez (“C. Sanchez”), Manuel Sanchez (“M.
6 Sanchez”), and Guillermina Jiminez (“Jiminez”) (“Counterclaimants/Cross-claimants”)’s
7 counterclaim and cross-claim under Fed. R. Civ. P. 12(b)(6) (“Rule 12(b)(6)”)
8 Counterclaimant/Cross-claimant)s’ opposition, and the RDA’s and City’s reply.¹ Based on
9 such considerations, the court concludes as follows:

10
11 **I.**
12 **BACKGROUND**²

13 The United States Department of Housing and Urban Development (“HUD”)
14 acquired residential homes through default and foreclosure and then sold those homes to
15 public entities at reduced prices. The public entities were to rehabilitate and sell the homes to
16 qualified first-time home buyers of low or moderate income, who would then occupy the
17 homes. HUD required these buyers to pay a minimum down payment for each home. The
18 required down payment and actual occupation of the homes by the buyers were intended to
19 reduce the risk of future default by the buyers and foreclosure of the homes.

20 The RDA participated in an Acquisition, Rehabilitation and Resale (“ARR”) program
21 for homes sold by HUD. Under this program, selected developers could purchase these
22 homes under certain restrictions and conditions from the RDA, who had acquired the homes

23 _____
24 ¹Counterclaimants filed on January 18, 2003 a pleading entitled “Counterclaim” naming the
25 RDA and City as Counterdefendants and themselves as Counterclaimants. Such categorization as
26 to the RDA is correct since it is the plaintiff. The City, however, is not a proper counterdefendant
27 because it is not a plaintiff. See Fed. R. Civ. P. 13(a)-(b). Since RDA is a proper counterdefendant
28 and a party to this action, the City would be a proper cross-defendant if the counter-claimants had
filed a cross-claim against the City. See Fed. R. Civ. P. 13(g). The counterclaimants did not do so,
but for the purposes of the issues addressed by this Order, the court will refer to the City as “Cross-
defendant” and assume that the counterclaim against the City is a cross-claim.

²The facts in the Background are taken from the RDA’s complaint.

1 from HUD. The developers agreed to repair and rehabilitate the homes and sell them to
2 qualified purchasers who would then occupy the homes.

3 The RDA provided partial financing in the form of “HOME” and “MAP” (Mortgage
4 Assistance Program”) loans to home buyers to help them purchase ARR homes. Under the
5 MAP program, qualifying home buyers could borrow a percentage of the purchase price from
6 the RDA in the form of MAP funds, which would be secured by second trust deeds. The
7 RDA relied on the ARR developer/sellers and the primary lenders, whose loans would be
8 secured by first trust deeds, to determine if prospective buyers qualified for MAP loans and to
9 provide loan underwriting services for MAP funds and primary purchase loans.

10 Defendant Alvarez & Associates entered into two ARR agreements with the RDA as
11 a developer/seller. The first agreement, entitled Housing Rehabilitation Participation
12 Agreement (“HRP Agreement”), was entered into on October 14, 1997. The second
13 agreement, entitled Acquisition, Rehabilitation Resale Agreement (“ARR Agreement”), was
14 entered into on August 2, 1999. These agreements required Alvarez & Associates and its
15 partners to screen the buyers for eligibility and to cause the opening of escrows for the sale of
16 the houses to qualified buyers. The RDA alleges that certain defendants identified in the
17 Complaint as the Alvarez Defendants aided unqualified buyers to obtain loans from third
18 party lenders and mortgage assistance in the form of MAP funds.

19 The RDA filed a complaint on January 18, 2002 in the Superior Court of the State of
20 California for the County of San Bernardino (“Superior Court”). The complaint names the
21 Alvarez defendants along with more than 50 “borrower defendants”, among whom are
22 counterclaimants and cross-claimants, and who borrowed money from the RDA MAP funds
23 in order to purchase rehabilitated homes from Alvarez & Associates. The complaint alleges
24 claims for: 1) fraudulent deceit under CAL CIV. CODE §§ 1709 and 1710 against all
25 defendants; 2) negligent misrepresentation against the Alvarez defendants;
26 3) interference with contract against the Alvarez defendants; 4) violation of 18 U.S.C. §
27 1962(a)-(d) of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) against the
28 Alvarez defendants; 5) violation of the False Claims Act under CAL. GOVT. CODE § 12650

1 et seq. against all defendants; 6) unfair business practices under CAL. BUS. & PROF. CODE §
2 17200 et seq. against the Alvarez defendants; 7) unjust enrichment against all defendants; 8)
3 breach of contract against the borrower defendants and Alvarez & Associates; 9) money had
4 and received against the borrower defendants and Alvarez & Associates; and 10) money lent
5 against the borrower defendants.

6 The action was removed to this court on the basis of federal question jurisdiction
7 under 28 U.S.C. § 1441,³ as the RDA's fourth claim alleges a federal RICO violation.

8 On June 18, 2002, defendants Lopez, Speer, Yniguez, C. Sanchez, M. Sanchez, and
9 Jiminez filed a counterclaim and cross-claim against the RDA and City, respectively, alleging
10 deprivation of their rights of due process and equal protection under the Fourth, Fifth, and
11 Fourteenth amendments of the U.S. Constitution pursuant to 42 U.S.C. § 1983 ("Section
12 1983"). The counterclaim and cross-claim seek compensatory and punitive damages, as well
13 as attorney's fees and costs.

14 On October 15, 2003 the court ordered all supplemental state claims and related
15 counterclaims and cross-claims remanded to the Superior Court.

17 **II.** 18 **ANALYSIS**

19 **A. Remand of Counterclaim and Cross-claim Based on Federal Law**

20 Having remanded the supplemental state claims, as well as the related counterclaims
21 and cross-claims, this court must determine whether it retains jurisdiction over the borrower
22 defendants' counterclaim against RDA and cross-claim against the City. Unlike the
23 supplemental state claims against the borrower defendants, which were based predominantly
24 on state law, the borrower defendants' counterclaim and cross-claim against RDA and the
25 City are brought pursuant to a federal statute, 42 U.S.C. § 1983.

26 If RDA's state claims against the borrower defendants had remained in state court,
27

28 ³ Certain of the Alvarez defendants were the only defendants to have been served with
process as of the date of removal (February 22, 2002).

1 where they were originally brought, the § 1983 counterclaim and cross-claim by the borrower
2 defendants would not allow those defendants to remove the action to federal court. See Metro
3 Ford Truck Sales, Inc. v. Ford Motor Co., 145 F.3d 320, 327 (5th Cir. 1998). For both
4 removal and original jurisdiction, the federal question must be presented by the plaintiff's
5 complaint as it stands at the time of removal. Id. Removal, therefore, cannot be based on a
6 counterclaim or cross-claim raising a federal question. Id. This principle applies, regardless
7 of whether that counterclaim or cross-claim is filed in state or federal court; to hold otherwise
8 would allow defendants to determine the removability of a case. See Great Northern Ry. Co.
9 v. Alexander, 246 U.S. 276, 281, 38 S.Ct. 237, 239 (1918) ("It is also settled that a case,
10 arising under the laws of the United States, nonremovable on the complaint, when
11 commenced, cannot be converted into a removable one by evidence of the defendant ..., but
12 that such conversion can only be accomplished by the voluntary amendment of his pleading
13 by the plaintiff...."). The borrower defendants' filing of their § 1983 counterclaim and cross-
14 claim in federal court after removal, therefore, does not create removal jurisdiction by this
15 court over those claims.
16

17
18 In its October 15, 2003 order regarding the claims stated in the complaint against the
19 borrower defendants, this court determined that state law predominated, and that the interests
20 of judicial economy, convenience, fairness, and comity warranted remand of the
21 supplemental state claims under 28 U.S.C. § 1441(c) ("§ 1441(c)") and 28 U.S.C. §
22 1367(c)(2) ("§ 1367(c)(2)"). Having remanded the state claims against the borrower
23 defendants, the question arises whether this court has authority to remand the federal
24 counterclaim and cross-claim by the borrower defendants. Although a § 1983 claim is a
25 federal claim, state courts have concurrent jurisdiction with the federal court to adjudicate
26 claims arising under that statute. See, e.g., Felder v. Casey, 487 U.S. 131, 139, 108 S.Ct.
27
28

1 2302 (1988). Thus, although this court has original jurisdiction over § 1983 claims, it by no
2 means has exclusive jurisdiction over such actions. See Arizona v. Manypenny, 451 U.S.
3 232, 101 S.Ct. 1657 (1981). If the federal claim fell within the exclusive jurisdiction of the
4 court, remand would be inappropriate because the state court would be unable to hear the
5 federal claim. Id. This is not the scenario present in the instant case.

7 As discussed above, the borrower defendants' § 1983 counterclaim and cross-claim
8 could not, and did not, confer removal jurisdiction by this court. Moreover, since § 1441(c)
9 permits federal courts to remand an entire action, including both state and federal claims, if it
10 finds that state law predominates, it also follows that it enables the court to remand
11 counterclaims and cross-claims in that action, even if those latter claims are based on federal
12 law. Metro Ford Truck Sales, Inc. v. Ford Motor Co., 145 F.3d at 328.

14 For the reasons stated above, the court will exercise its jurisdiction and remand the §
15 1983 counterclaim and cross-claim against RDA and the City to state court, pursuant to §
16 1441(c) because the supplemental state claims previously remanded to state court
17 predominate over the federal § 1983 counterclaim and cross-claim.

19 **B. Counterdefendant's and Cross-Defendant's Motion to Dismiss**

20 The court, having decided to remand the borrower defendants' counterclaim and
21 cross-claim alleging a violation of § 1983 to the Superior Court, the RDA's and City's
22 motion to dismiss the counterclaim and cross-claim is moot because the counterclaim and
23 cross-claim that the instant motion seeks to dismiss are no longer within the jurisdiction of
24 this court. Therefore, the motion will be dismissed as moot.

26 ///

27 ///

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
27
28

III.
DISPOSITION

ACCORDINGLY, IT IS ORDERED THAT:

- 1) Counterclaimants' and Cross-claimants' § 1983 claims against RDA and the City are REMANDED to the Superior Court of the State of California for the County of San Bernardino, pursuant to 28 U.S.C. § 1441(c); and
- 2) Counterdefendant RDA's and Cross-defendant City's motion to dismiss the counterclaim/ cross-claim against them, respectively, under Rule 12(b)(6) is DENIED, as moot.

DATED: October 21, 2003

ROBERT J. TIMLIN
United States District Judge