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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANDREW WEINBERG, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No.: 23cv454-LL-BLM

**ORDER GRANTING PLAINTIFF’S
MOTION TO REMAND**

[ECF No. 10]

I. BACKGROUND

On March 10, 2023, Defendant Walmart Inc. (“Defendant”) filed a Notice of Removal of this action from San Diego County Superior Court. ECF No. 1. Defendant’s Notice of Removal asserted jurisdiction was proper pursuant to 28 U.S.C. § 1332 because: “(1) Plaintiff Andrew Weinberg’s (“Plaintiff”) proposed putative class includes more than 100 members; (2) diversity of citizenship exists; and (3) the amount placed in controversy by Plaintiff’s claims exceeds \$5,000,000, exclusive of interest and costs.” *Id.* at 2.

On March 30, 2023, Plaintiff Andrew Weinberg (“Plaintiff”) filed a Motion to Remand (“Motion”). ECF No. 10. In his Motion, Plaintiff argues that there is no federal equitable jurisdiction and that he lacks standing over the claim asserted in this action. *See*

1 ECF No. 10-1 at 5. On April 21, 2023, Defendant filed a statement of non-opposition to
2 Plaintiff’s Motion. ECF No. 13.

3 **II. LEGAL STANDARD**

4 **A. Remand**

5 A federal court has an independent obligation to examine its own jurisdiction.
6 *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000). In a removed action, if it
7 appears at any time before final judgment that the court lacks subject matter jurisdiction,
8 the court must remand the action to state court. *See* 28 U.S.C. § 1447(c). “The removal
9 statute is strictly construed, and any doubt about the right of removal requires resolution in
10 favor of remand.” *See Moore–Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th
11 Cir. 2009) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). The party
12 invoking the removal statute bears the burden of establishing that federal subject matter
13 jurisdiction exists. *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197–98 (9th Cir. 2015)
14 (citing *Dart Basin Operating Co. v. Owens*, 574 U.S. 81, 88–91 (2014)).

15 **B. Article III Standing**

16 “[A] suit brought by a plaintiff without Article III standing is not a ‘case or
17 controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction over
18 the suit.” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). In order to have
19 standing under Article III, “a plaintiff must show that he is under threat of suffering ‘injury
20 in fact’ that is concrete and particularized; the threat must be actual and imminent, not
21 conjectural or hypothetical; it must be fairly traceable to the challenged action of the
22 defendant; and it must be likely that a favorable judicial decision will prevent or redress
23 the injury.” *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Moreover,
24 plaintiffs seeking injunctive relief “must demonstrate that they are realistically threatened
25 by a repetition of the violation.” *See Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 2006)
26 (emphasis in original).

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1 **III. DISCUSSION**

2 Defendant’s one sentence statement of non-opposition does not explain why it does
3 not oppose remand even though it was the party that removed the case. As such, the Court
4 is left to consider only Plaintiff’s Motion.

5 A plaintiff who alleges past wrongs and seeks prospective injunctive relief must also
6 “establish a real and immediate threat” that he or she will suffer the same injury in the
7 future. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101-06 (1983) (“[P]ast wrongs do
8 not in themselves amount to that real and immediate threat of injury necessary to make out
9 a case or controversy.”); *see also HodgersDurgin v. De La Vina*, 199 F.3d 1037, 1045 (9th
10 Cir. 1999) (“system-wide injunctive relief is not available based on alleged injuries to
11 unnamed members of a proposed class”). Here, Plaintiff’s Complaint states only one cause
12 of action against Defendant for a violation of the California Unfair Competition Law and
13 seeks restitution and injunctive relief. *See* ECF No. 1-2 at 18. Plaintiff, however,
14 acknowledges that he did not allege any imminent or actual threat of future harm from
15 Defendant’s allegedly unfair business practices. *Id.*

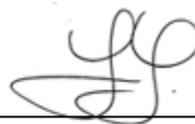
16 Further, Plaintiff’s knowledge of the alleged unfair business practices means that
17 Plaintiff lacks Article III standing for an injunctive relief claim in federal court. *See In re*
18 *Yahoo Mail Litigation*, 308 F.R.D. 577, 587 (N.D. Cal. 2015) (a plaintiff’s knowledge of a
19 defendant’s practices “precludes them from showing a likelihood of being injured in the
20 future by those practices”) (internal quotation marks and citation omitted). As such,
21 Plaintiff’s claims should be remanded to state court on these uncontested allegations.

22 **IV. CONCLUSION**

23 For the reasons set forth above, Plaintiff’s Motion to Remand is **GRANTED**, and
24 the case is therefore **REMANDED** back to the San Diego County Superior Court.

25 **IT IS SO ORDERED.**

26 Dated: May 2, 2023

27 

28 Honorable Linda Lopez
United States District Judge