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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TROY FLOWERS, an individual,

Plaintiff,

v.

FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.,
a private company; DOES 1 through
30, inclusive,

Defendants.

CASE NO. 15cv2390 DMS (JMA)

**ORDER (1) GRANTING
PLAINTIFF’S MOTION TO
REMAND AND (2) DENYING
PLAINTIFF’S MOTION FOR
ATTORNEYS FEES**

This matter comes before the Court on Plaintiff’s motion to remand and for attorneys fees. Defendant filed an opposition to the motion, and Plaintiff filed a reply. After the Court took the motion under submission, Defendant filed a Notice of Recent Authority in support of its opposition to the motion, to which Plaintiff filed an opposition. After a thorough review of the issues, the motion to remand is granted and the motion for fees is denied.

**I.
BACKGROUND**

Plaintiff Troy Flowers is a former financial advisor and securities broker who was licensed by Defendant Financial Industry Regulatory Authority, Inc. (“FINRA”). Plaintiff alleges he terminated his license with Defendant on July 31, 2000. (Compl.

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1 ¶ 7.) Thereafter, three entries were recorded against Plaintiff in Defendant’s database.
 2 (*Id.* ¶¶8-10.)

3 On September 3, 2015, Plaintiff filed the present Complaint against Defendant
 4 in San Diego Superior Court alleging one claim for expungement in equity. Through
 5 that claim Plaintiff seeks to expunge those three entries from his record. Defendant
 6 removed the case to this Court on October 22, 2015, on the basis of federal question
 7 jurisdiction. The present motion followed.

8 II.

9 MOTION TO REMAND

10 In its Notice of Removal, Defendant alleged,

11 Section 27 of the Exchange Act, 15 U.S.C. § 78aa, vests in federal courts
 12 exclusive jurisdiction for violations of the Exchange Act or the rules and
 13 regulations thereunder, and for “all suits in equity and actions at law
 brought to enforce any liability or duty created by [the Exchange] Act or
 the rules or regulations thereunder.”

14 (Notice of Removal ¶ 6.) Defendant acknowledged that two district courts in California
 15 have refused to find federal question jurisdiction in cases similar to this one, *see In re*
 16 *Lickiss*, No. C-11-1986 EMC, 2011 U.S. Dist. LEXIS 66437 (N.D. Cal. June 22, 2011);
 17 *Doe v. Financial Industry Regulatory Authority, Inc.*, No. CV 13-06436 DDP (ASX),
 18 2013 U.S. Dist. LEXIS 164671 (C.D. Cal. Nov. 19, 2013), but alleged this case is
 19 different because Plaintiff “seeks to remove regulatory information – not customer
 20 complaints.” (*Id.* ¶ 5.) Plaintiff disagrees that his case is any different from *Lickiss* and
 21 *Doe*, and argues his case, like those, should be remanded to state court.

22 Like Plaintiff here, the plaintiff in *Lickiss* filed a complaint in state court seeking
 23 to expunge certain information from the Central Registration Depository (“CRD”).¹
 24 FINRA removed the case to federal court on the basis of federal question jurisdiction,
 25 specifically 15 U.S.C. § 78aa. That statute provides:

26
 27 ¹ The CRD “is the database that FINRA and the securities commissions of the
 28 50 states developed to store, among other information, information about regulatory,
 enforcement and arbitration actions taken against registered representatives and other
 securities personnel in accordance with” their statutory obligations. *Lickiss*, 2011 U.S.
 Dist. LEXIS 66437, at *2 (quoting Notice of Removal ¶ 4).

1 The district courts of the United States and the United States courts of any
2 Territory or other place subject to the jurisdiction of the United States
3 shall have exclusive jurisdiction of violations of this title [15 U.S.C. §§
4 78a *et seq.*] or the rules and regulations thereunder, and of all suits in
equity and actions at law brought to enforce any liability or duty created
by this title [15 U.S.C. §§ 78a *et seq.*] or the rules and regulations
thereunder.

5 15 U.S.C. § 78aa(a). On the plaintiff’s motion to remand, the court framed the issue as
6 “whether Mr. Lickiss brought this lawsuit to enforce a duty created by the Securities
7 Exchange Act or the rules and regulations thereunder.” 2011 U.S. Dist. LEXIS 66437,
8 at *6-7. After reviewing the Act and its rules and regulations, the court found none of
9 them imposed on FINRA a duty to expunge information contained in the CRD. *Id.* at
10 *10. It found the plaintiff was simply pursuing a procedure established by FINRA Rule
11 2080, by which “[m]embers or associated persons seeking to expunge information
12 from the CRD system arising from disputes with customers must obtain an order from
13 a court of competent jurisdiction directing such expungement” *Id.* at *3 (quoting
14 FINRA Rule 2080(a)). Considering the language of § 78aa(a), which gives federal
15 courts exclusive jurisdiction over claims “brought to enforce any liability or duty
16 created by” § 78a *et seq.* or the rules and regulations thereunder, and Rule 2080(a),
17 which refers to courts of “competent jurisdiction,” the court concluded it lacked subject
18 matter jurisdiction over the case and, thus, remanded the case to state court.

19 *Spalding v. Financial Industry Regulatory Authority, Inc.*, No. 1:12-CV-1181-
20 RWS, 2013 U.S. Dist. LEXIS 37291 (N.D. Ga. March 19, 2013), is similar. The
21 plaintiff in that case, as in *Lickiss* and this case, filed a complaint in state court against
22 FINRA seeking to expunge certain information from the CRD. FINRA removed the
23 case to federal court, and the plaintiff filed a motion to remand. The *Spalding* court
24 framed the issue slightly differently from the *Lickiss* court. It stated “the root analysis
25 for purposes of [the plaintiff’s motion to remand] is whether Plaintiff’s claim implicates
26 significant federal issues.” *Id.* at *6-7. The court adopted the holding in *Lickiss* that
27 FINRA has no regulatory or statutory duty to expunge information from the CRD, and
28 thus there was no federal question jurisdiction over the plaintiff’s claim. *Id.* at *8-13.

1 The court then turned to whether “a court deciding Plaintiff’s claim will have to
2 interpret federal law[,]” *id.* at *13, and answered that question in the negative. It found
3 the relief sought in the complaint was fact specific, and the issues in the case did “not
4 require resolution of an important question of law,” and thus did “not trigger federal-
5 question jurisdiction.” *Id.* at *15. The court found Rule 2080 was cited simply to
6 provide context, it did “not provide any substantive criteria for courts to apply to
7 determine whether information should be expunged from an investment advisor’s
8 record.” *Id.* There being no basis for federal question jurisdiction, the *Spalding* court
9 granted the plaintiff’s motion to remand.

10 One other court has reached the same result as *Lickiss* and *Spalding*. *See Doe*,
11 2013 U.S. Dist LEXIS 164671. In that case, too, the plaintiff filed a complaint in state
12 court seeking to expunge certain information from the CRD. *Id.* at *3. FINRA
13 removed the case to federal court, and the plaintiff moved to remand. Relying on
14 *Lickiss*, the *Doe* court found “there is no exclusive federal question jurisdiction over
15 Plaintiff’s cause of action for expungement.” *Id.* at *7. The court then cited *Spalding*
16 in concluding the plaintiff’s claim “does not raise a substantial issue of federal law, as
17 a determination of whether expungement is appropriate in this particular case is a fact-
18 specific analysis.” *Id.* at *9-10.

19 Here, as mentioned above, FINRA asserts this case is distinguishable from
20 *Lickiss* and *Doe* because Plaintiff “seeks to remove regulatory information – not
21 customer complaints.” (Notice of Removal ¶ 5.) However, neither *Lickiss* nor *Doe*
22 relied on the type of information at issue in reaching the conclusion that federal
23 question jurisdiction was lacking. Rather, those courts relied on the language of 15
24 U.S.C. § 78aa, which gives federal courts exclusive jurisdiction over only those claims
25 involving a “liability or duty” created by the Exchange Act. Those courts found the
26 claims at issue did not involve any such “liability or duty,” and therefore federal
27 question jurisdiction was lacking. That reasoning applies to this case, as well, even
28 though the type of information sought to be expunged may be different.

1 Next, FINRA argues, as it did in *Spalding* and *Doe*, that this case raises
2 substantial questions of federal law. This argument, however, was rejected in those
3 cases, and the reasoning of those cases applies with equal force here.²

4 In sum, Defendant has not shown why this case falls outside the holdings of
5 *Lickiss*, *Spalding* and *Doe*. This Court finds the reasoning of those cases persuasive,
6 and like those courts, finds there is no basis for this Court to exercise jurisdiction over
7 this case.

8 III.

9 ATTORNEYS FEES

10 In light of the Court's decision to remand this case, Plaintiff asks the Court to
11 award him attorneys fees and costs pursuant to 28 U.S.C. § 1447(c). "Absent unusual
12 circumstances, courts may award attorney's fees under § 1447(c) only where the
13 removing party lacked an objectively reasonable basis for seeking removal." *Martin*
14 *v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

15 Here, Plaintiff argues FINRA did not have an objectively reasonable basis for
16 removal in light of the case law discussed above. Those cases are clear that federal
17 question jurisdiction is lacking in cases such as this. However, FINRA had a reasoned
18 basis for distinguishing this case from the others: the information sought to be expunged
19 here is regulatory information, not customer complaints. Although the Court disagrees
20 with FINRA that this distinction affects the jurisdictional analysis, the Court cannot say
21 FINRA lacked an objectively reasonable basis for the removal. Accordingly, Plaintiff's
22 motion for attorneys fees is denied.

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25 ² In its opposition to the motion to remand, FINRA raises the issue of complete
26 preemption. (Mem. of P. & A. in Opp'n to Mot. at 9-11.) That issue was not alleged
27 in the Notice of Removal, and FINRA has failed to show it is entitled to amend that
28 Notice to include preemption as a basis for jurisdiction. See *Isom v. Marg*, No. 2:14-cv-
4355-SVW, 2014 U.S. Dist. LEXIS 97431, at *11-13 (C.D. Cal. July 17, 2014). See
also *Abdale v. N. Shore-Long Island Jewish Health Sys.*, No. 13-CV-1238(JS)(WDW),
2014 U.S. Dist. LEXIS 88881, at *10-11 (E.D.N.Y. June 30, 2014) (finding defendants
waived federal question jurisdiction as basis for removal by failing to allege it in notice
of removal). Therefore, the Court declines to address that issue here.

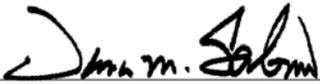
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IV.
CONCLUSION

For these reasons, the Court grants Plaintiff's motion to remand and denies Plaintiff's motion for attorneys fees.

IT IS SO ORDERED.

DATED: December 24, 2015



HON. DANA M. SABRAW
United States District Judge