

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HOLLY BARON,
Plaintiff,

No. 3:16-cv-01976 (SRU)

v.

MUTUAL HOUSING ASSOCIATION
OF GREATER HARTFORD,
Defendant.

ORDER TO SHOW CAUSE

On December 2, 2016, the defendant, Mutual Housing Association of Greater Hartford (“the Association”), removed to this court a complaint filed by the plaintiff, Holly Baron, in Connecticut Superior Court. Baron’s complaint alleges that the Association retaliated against her in violation of section 31-51q of the Connecticut General Statutes. Although Baron’s complaint on its face raises no claim for violation of any federal law, the Association nevertheless contends that I have federal question jurisdiction pursuant to 28 U.S.C. § 1331, because courts may look to the First Amendment to the U.S. Constitution in assessing a claim under section 31-51q. *See Bracey v. Board of Education*, 368 F.3d 108, 113–16 (2d Cir. 2004),

A plaintiff seeking relief under section 31-51q is not required to base her claim on a violation of the First Amendment, however. The statute protects an employee against retaliation for “the exercise . . . of rights guaranteed by the first amendment to the United States Constitution *or* section 3, 4 or 14 of article first of the Constitution of the state.” *See Kolpinski v. Rushford Ctr.*, 2016 WL 3919798, at *3 (D. Conn. July 18, 2016) (quoting Conn. Gen. Stat. § 31-51q) (emphasis in *Kolpinski*). Thus, Baron “can base [her] claim on an underlying violation of the U.S. Constitution, the Connecticut Constitution, or both.” *Id.* If she “expressly disclaim[s] any alleged infringement of h[er] First Amendment rights” and “ch[oo]ses to seek protection

solely under the Connecticut Constitution,” then I lack subject matter jurisdiction and must remand the instant case to state court. *Id.*

“The absence of subject matter jurisdiction is non-waivable,” and upon removal of a case I must “assure [myself] that the case is properly within [my] subject matter jurisdiction.” *United States v. Bond*, 762 F.3d 255, 263 (2d Cir. 2014). After examining Baron’s complaint, Doc. No. 1-1, I cannot discern whether she intends to “base [her] claim on an underlying violation of the U.S. Constitution, the Connecticut Constitution, or both.” *See Kolpinski*, 2016 WL 3919798, at *3. As a result, I cannot confirm that I have “power to hear [the] case.” *See J.S. v. T’Katch*, 714 F.3d 99, 104 (2d Cir. 2013) (quoting *Morrison v. Nat’l Austl. Bank*, 561 U.S. 247, 254 (2010)).

To clarify whether subject matter jurisdiction exists in this case, I order Baron to file within two weeks an amended complaint or a notice on the docket that identifies the statutory basis of her claim. If she elects to sue only for a violation of rights protected by the Connecticut Constitution, then I will remand the case to Connecticut Superior Court.

So ordered.

Dated at Bridgeport, Connecticut, this 7th day of December 2016.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge