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

MARIA A. GARCIA, individually and on behalf of herself and others similarly situated,

Plaintiffs,

v.

QUEST GROUP CONSULTING, LLC, a Georgia limited liability company;
QUEST GROUP SEARCH, LLC, a Georgia limited liability company;
DOUGLAS SHAENER, an individual;
JASON HANGES, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21-cv-02041-H-WVG

ORDER:

(1) GRANTING PLAINTIFF’S MOTION TO REMAND; AND

[Doc. No. 7.]

(2) DENYING DEFENDANTS’ MOTION TO DISMISS AS MOOT

[Doc. No. 3.]

On December 13, 2021, Defendants Quest Group Consulting, LLC, Quest Group Search, LLC, Douglas Shaener, and Jason Hanges filed a motion to dismiss Plaintiff Maria Garcia’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 3.) On December 30, 2021, Plaintiff Maria A. Garcia filed a motion to remand the action back to state court. (Doc. No. 7.) On January 13, 2022, Defendants filed a response in

1 opposition to Plaintiff’s motion to remand. (Doc. No. 9.) On January 24, 2022, Plaintiff
2 filed a reply in support of her motion to remand. (Doc. No. 10.)

3 A hearing on Plaintiff’s motion to remand is scheduled for Monday, January 31,
4 2022 at 10:30 a.m., and a hearing on Defendants’ motion to dismiss is scheduled for
5 Monday, February 28, 2022 at 10:30 a.m. The Court, pursuant to its discretion under Civil
6 Local Rule 7.1(d)(1), determines the matters are appropriate for resolution without oral
7 argument, submits the motions on the parties’ papers, and vacates the hearings. For the
8 reasons below, the Court grants Plaintiff’s motion to remand, and the Court denies
9 Defendants’ motion to dismiss as moot.

10 **Background**

11 The following background is taken from the allegations in Plaintiff’s state court
12 complaint. Defendants are temporary service employers within the meaning of California
13 Labor Code § 201.3(a)(1). (Doc. No. 1-2, Compl. ¶ 18.) Defendants employed Plaintiff
14 and other employees on an hourly basis as non-exempt workers to perform work in
15 California for various customers. (Id. ¶ 19.) Specifically, Defendants employed Plaintiff
16 as a youth care worker to supervise unaccompanied migrant children who were temporarily
17 housed in California. (Id. ¶ 21.)

18 Plaintiff alleges that during her employment, Defendants violated various sections
19 of the California Labor Code and Industrial Welfare Commission Wage Orders. (Id. ¶¶ 2,
20 39-71.) In addition, Plaintiff alleges that when she was a job applicant, Defendants
21 procured an investigative consumer report regarding Plaintiff after requiring her to sign a
22 deficient disclosure form in violation of the California Investigative Consumer Reporting
23 Agencies Act (the “ICRAA”), California Civil Code § 1786, et seq. (Id. ¶¶ 1, 75-91.)

24 On October 25, 2021, Plaintiff filed a complaint in the Superior Court of California,
25 County of San Diego against Defendants, alleging nine claims under the California Private
26 Attorney General Act (“PAGA”), California Labor Code §§ 2698, 2699; and one claim for
27 violations of the ICRAA. (Doc. No. 1-2, Compl.) On December 6, 2021, Defendants
28 removed the action to United States District Court for the Southern District of California

1 pursuant to 28 U.S.C. § 1441 on the basis of diversity jurisdiction under 28 U.S.C. §
2 1332(a). (Doc. No. 1, Notice of Removal ¶¶ 1, 56-60.)

3 By the present motion, Plaintiff moves to remand the action back to the Superior
4 Court of California, County of San Diego for lack of subject matter jurisdiction (Doc. No.
5 7-1 at 12.) In addition, Defendants move to dismiss Plaintiff’s complaint pursuant to
6 Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (Doc. No. 3 at 1-8.)

7 Discussion

8 **I. Plaintiffs’ Motion to Remand**

9 “A defendant generally may remove a civil action if a federal district court would
10 have original jurisdiction over the action.” Allen v. Boeing Co., 784 F.3d 625, 628 (9th
11 Cir. 2015) (citing 28 U.S.C. § 1441(a)); see Caterpillar Inc. v. Williams, 482 U.S. 386, 392
12 (1987). “Federal courts are courts of limited jurisdiction and, as such, cannot exercise
13 jurisdiction without constitutional and statutory authorization.” Hansen v. Grp. Health
14 Coop., 902 F.3d 1051, 1056 (9th Cir. 2018). There is a strong presumption against removal
15 jurisdiction, and courts strictly construe the removal statute against removal jurisdiction.
16 See Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1107
17 (9th Cir. 2010). “The removing defendant bears the burden of overcoming the ‘strong
18 presumption against removal jurisdiction.’” Hansen, 902 F.3d at 1057; see also Scott v.
19 Breeland, 792 F.2d 925, 927 (9th Cir. 1986) (“The party seeking to invoke the court’s
20 jurisdiction bears the burden of establishing that jurisdiction exists.”).

21 Here, Defendants removed the action to federal court on the basis of diversity
22 jurisdiction under 28 U.S.C. § 1332(a). (Doc. No. 1, Notice of Removal ¶¶ 1, 56-60.)
23 “Traditional diversity jurisdiction requires complete diversity of citizenship and an amount
24 in controversy greater than \$75,000.” Canela v. Costco Wholesale Corp., 971 F.3d 845,
25 849 (9th Cir. 2020) (citing 28 U.S.C. § 1332(a)).

26 Plaintiff argues that diversity jurisdiction is lacking in this case because the amount
27 in controversy for this case is well below the \$75,000 requirement. (Doc. No. 7-1 at 4-11.)
28 “Where, as here, ‘a plaintiff’s state court complaint does not specify a particular amount of

1 damages, the removing [party] bears the burden of establishing, by a preponderance of the
2 evidence, that the amount in controversy exceeds' the threshold at the time of removal.”
3 Canela, 971 F.3d at 849.

4 A. Plaintiff's PAGA Claims

5 In the complaint, Plaintiff alleges nine PAGA claim against the Defendants. (Doc.
6 No. 1-2, Compl. ¶¶ 105-83, 190-202.) In their notice of removal, Defendants contend that
7 the amount in controversy for Plaintiff's PAGA claims is \$4,250 plus attorney's fees. (See
8 Doc. No. 1, Notice of Removal ¶¶ 17, 20, 23, 26, 29, 32, 35, 38, 47.) In her motion to
9 remand, Plaintiff contends that this calculation is incorrect and that the proper amount in
10 controversy for her PAGA claims including attorney's fees is \$2,125. (Doc. No. 7-1 at 5-
11 9.) In response, Defendants state that, for the purposes of Plaintiff's motion to remand
12 only, Defendants are willing to concede to Plaintiff's amount in controversy calculation
13 for her PAGA claims. (Doc. No. 9 at 2 n.3, 5 n.4.)

14 Thus, for the purposes of analyzing Plaintiff's motion to remand, the parties are in
15 agreement that the amount in controversy for Plaintiff's PAGA claims including attorney's
16 fees is \$2,125. As such, in order for Plaintiff's complaint to satisfy the \$75,000 amount in
17 controversy requirement for diversity jurisdiction, Plaintiff's remaining claim, her ICRAA
18 claim, must have an amount in controversy of at least \$72,875. The Court addresses the
19 amount in controversy for Plaintiff's ICRAA claim below.

20 B. Plaintiff's ICRAA Claim

21 In the complaint, Plaintiff alleges a claim for violations of the ICRAA against
22 Defendants Quest Consulting and Quest Group Search. (Doc. No. 1-2, Compl. ¶¶ 184-89.)
23 Defendants contend that the amount in controversy for Plaintiff's ICRAA claim is
24 \$120,000 plus attorney's fees. (Doc. No. 9 at 4.) Plaintiff argues that Defendants'
25 calculation is incorrect and that the proper amount in controversy for her ICRAA claim is
26 \$20,000 plus attorney's fees. (Doc. No. 7-1 at 11.)

27 California's ICRAA is intended "to ensure that entities engaged in assembling and
28 evaluating information on consumers for employment, insurance, and housing purposes do

1 so fairly, impartially, and with respect for the consumer’s privacy.” Palma v. Cty. of
2 Stanislaus, No. 1:17-CV-0819 AWI EPG, 2017 WL 6513282, at *6 (E.D. Cal. Dec. 20,
3 2017) (citing Cal. Civ. Code § 1786(b)); see Connor v. First Student, Inc., 5 Cal. 5th 1026,
4 1032 (2018). Relevant here, California Civil Code § 1786.16(a) of the ICRAA provides:

5 (a) Any person described in subdivision (d) of Section 1786.12 shall not
6 procure or cause to be prepared an investigative consumer report unless the
7 following applicable conditions are met:

8 . . .

9 (2) If, at any time, an investigative consumer report is sought for employment
10 purposes other than suspicion of wrongdoing or misconduct by the subject of
11 the investigation, the person seeking the investigative consumer report may
12 procure the report, or cause the report to be made, only if all of the following
13 apply:

14 (A) The person procuring or causing the report to be made has a permissible
15 purpose, as defined in Section 1786.12.

16 (B) The person procuring or causing the report to be made provides a clear
17 and conspicuous disclosure in writing to the consumer at any time before the
18 report is procured or caused to be made in a document that consists solely of
19 the disclosure, that:

20 (i) An investigative consumer report may be obtained.

21 (ii) The permissible purpose of the report is identified.

22 (iii) The disclosure may include information on the consumer’s character,
23 general reputation, personal characteristics, and mode of living.

24 (iv) Identifies the name, address, and telephone number of the investigative
25 consumer reporting agency conducting the investigation.

26 (v) Notifies the consumer in writing of the nature and scope of the
27 investigation requested, including a summary of the provisions of Section
28 1786.22.

(vi) Notifies the consumer of the Internet Web site address of the investigative
consumer reporting agency identified in clause (iv), or, if the agency has no
Internet Web site address, the telephone number of the agency, where the
consumer may find information about the investigative reporting agency's
privacy practices, including whether the consumer’s personal information will
be sent outside the United States or its territories and information that

1 complies with subdivision (d) of Section 1786.20. This clause shall become
2 operative on January 1, 2012.

3 Cal. Civ. Code § 1786.16(a). The damages provision of the ICRAA, California Civil Code
4 § 1786.50, provides: “An investigative consumer reporting agency or user of information
5 that fails to comply with any requirement” of the ICRAA “with respect to an investigative
6 consumer report” is liable to the consumer who is the subject of the report for “[a]ny actual
7 damages sustained by the consumer as a result of the failure or, except in the case of class
8 actions, ten thousand dollars (\$10,000), whichever sum is greater.” Cal. Civ. Code §
9 1786.50(a); see Limson v. Bridge Prop. Mgmt. Co., 416 F. Supp. 3d 972, 983–84 (N.D.
10 Cal. 2019).

11 In the complaint, Plaintiff alleges that when she was a job applicant, Defendants
12 required her to sign various forms that purported to allow Defendants to obtain a consumer
13 investigative report on Plaintiff via a third party. (Doc. No. 1-2, Compl. ¶¶ 75-76.)
14 Plaintiff alleges that these forms failed to comply with the requirements of the ICRAA for
15 various reasons. (See id. ¶¶ 77-90.) Based on these allegations, Plaintiff alleges a claim
16 for violations of the ICRAA against Defendants Quest Consulting and Quest Group Search.
17 (Id. ¶¶ 184-89.) Plaintiff only seeks statutory damages with respect to her ICRAA claim.
18 (See id. ¶ 188, p. 34.)

19 Defendants contend that based on these allegations, the proper amount in
20 controversy for Plaintiff’s ICRAA claim is \$120,000 because Plaintiff alleges that Quest
21 Group violated several statutory sections of the ICRAA. (Doc. No. 9 at 3-5.) In contrast,
22 Plaintiff asserts that the proper amount in controversy is only \$20,000 based on her
23 allegations because there was only one background check performed, meaning that
24 Plaintiff is entitled to only one ICRAA statutory penalty per defendant. (Doc. No. 10 at
25 2.)

26 The Court agrees with Plaintiff’s interpretation of the ICRAA that under the facts
27 alleged, she is at most only entitled to one ICRAA penalty. California Civil Code §
28 1786.50(a) provides that a defendant that fails to comply with “any requirement” under the

1 ICRAA “with respect to an investigative consumer report” is liable to the consumer for
2 actual damages or \$10,000, whichever sum is greater. Cal. Civ. Code § 1786.50(a). Under
3 the plain language of the statute, the ICRAA penalty applies per “investigative consumer
4 report.”¹ Id. In the complaint, Plaintiff alleges that Defendants’ disclosures were deficient
5 with respect to a single consumer investigative report. (See Doc. No. 1-2, Compl. ¶¶ 75-
6 76, 90.) Thus, at most, Plaintiff would only be entitled to one \$10,000 ICRAA penalty.²

7 Moreover, Defendants have failed to provide the Court with any legal authority
8 supporting their proposed interpretation of the ICRAA. As the removing parties,
9 Defendants bear the burden of establishing that the amount in controversy requirement has
10 been satisfied and that this Court has subject matter jurisdiction over the action. See
11 Canela, 971 F.3d at 849; Scott, 792 F.2d at 927. Defendants have failed to meet their
12 burden.³

13 ///

14 ///

17 ¹ Similarly, California Civil Code § 1786.16 is also written in a manner where liability is determined
18 per consumer report. Section 1786.16(a) provides: “Any person described in subdivision (d) of Section
19 1786.12 shall not procure or cause to be prepared an investigative consumer report unless the following
20 applicable conditions are met.” Cal. Civ. Code § 1786.16(a). Thus, section 1786.16 is violated each time
21 someone procures “an investigative consumer report” without meeting all of the applicable conditions.

22 ² For the purposes of deciding Plaintiff’s motion to remand, the Court need not analyze Plaintiff’s
23 contention that she could be entitled to a ICRAA penalty against each of the named defendants for that
24 claim. Even if Plaintiff is correct, the amount in controversy for the claim would still only be \$20,000,
25 which when combined with Plaintiff’s PAGA claims would still be well under the \$75,000 requirement.

26 ³ Defendants note that Plaintiff seeks attorney’s fees with respect to her ICRAA claim and these
27 attorney’s fees may be included in the amount in controversy calculation. (Doc. No. 9 at 5.) Defendants
28 are correct that an award of attorney’s fees may be included in the amount in controversy calculation. See
Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998). But Defendants make no attempt to
establish what the amount of attorney’s fees for Plaintiff’s ICRAA claim might actually be. (See generally
Doc. No. 9.) Defendants bear the burden of proving future attorney’s fees with respect to the amount in
controversy, see Fritsch v. Swift Transportation Co. of Arizona, LLC, 899 F.3d 785, 795 (9th Cir. 2018),
and Defendants have failed to meet that burden with respect to the potential attorney’s fees for Plaintiff’s
ICRAA claim. See Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090–91 (9th Cir. 2003)
 (“Conclusory allegations as to the amount in controversy are insufficient.”).

1 C. Conclusion

2 In sum, Defendants have fails to prove that the \$75,000 amount in controversy
3 requirement for diversity jurisdiction has been met, and, thus, Defendants have failed to
4 establish that the Court has subject matter jurisdiction over the action and that removal was
5 proper. As such, the Court grants Plaintiff's motion to remand, and the Court remands the
6 action back to state court.

7 **II. Defendants' Motion to Dismiss**


8 Defendants move to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil
9 Procedure 12(b)(6) for failure to state a claim. (Doc. No. 3 at 1-8.) Because the Court
10 remands the action back to state court, the Court denies Defendants' motion to dismiss as
11 moot.

12 **Conclusion**

13 For the reasons above, the Court grants Plaintiff's motion to remand, and the Court
14 remands the action back to the Superior Court of California, County of San Diego. In
15 addition, the Court denies Defendants' motion to dismiss the complaint as moot. The Clerk
16 is directed to close the case.

17 **IT IS SO ORDERED.**

18 DATED: January 26, 2022

19 
20 MARILYN L. HUFF, District Judge
21 UNITED STATES DISTRICT COURT
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