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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JESSICA FULLER, et al.

Plaintiff,

vs.

BLOOM INSTITUTE OF TECHNOLOGY, et al.

Defendant.

Case No. 3:23-CV-01440-AGT

DEFENDANTS' OPPOSITION TO PLAINTIFFS' SECOND MOTION TO REMAND OR IN THE ALTERNATIVE FOR LEAVE TO CONDUCT JURISDICTIONAL DISCOVERY

Date: June 7, 2023
Time: 10:00 a.m.
Dept: Courtroom A, 15th Floor
Judge: Magistrate Alex G. Tse

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INTRODUCTION

In 2019 and 2021, four individuals enrolled in a coding course run by Bloom Institute of Technology ("Bloom" or "the School"). Rather than pay tuition for their education, each knowingly and voluntarily chose to sign an Income Share Agreement ("ISA") so they could be trained without paying any money whatsoever upfront. Then, some two-to-three years later, Plaintiffs' counsel filed this action to avoid the obligations their clients willingly assumed (namely, repayment) by suing Bloom and its founder, Mr. Austen Allred ("Allred") (together with the School, the "Defendants"). Despite Plaintiffs' agreement to pay for their education, their counsel now want to revise history and get their clients' education (and all its attendant benefits) for free.

In filing this lawsuit, the named Plaintiffs—four non-California residents—knowingly and voluntarily chose to assert allegations, not just on behalf of themselves, but also on behalf of a class of "thousands" of "similarly situated" students to cancel up to $30,000 for each and every student as apparently owed under their respective ISAs. Based on the allegations set forth in the Complaint, Defendants removed the action to this Court. (*See* Dkt. 19, Defendants' Amended Notice of Removal ("ANOR")). After receiving the Motion to Compel Arbitration, Motion to Strike, and respective Motions to Dismiss filed by Defendants, Plaintiffs apparently saw something in the case law that they did not like, and subsequently filed consecutive motions to remand. (*See* Dkt. 25, Plaintiffs' Second Motion to Remand ("Remand Motion")). Their Motion is without merit.

Through this submission, Defendants have provided Plaintiffs and the Court with more than enough evidence to confirm that result. Before filing the ANOR, the Defendants diligently searched their corporate records to confirm that they had grounds to remove the action under the Class Action Fairness Act's ("CAFA") revisions to 28 U.S.C. § 1332. The results of that investigation—as set forth in the declaration and accompanying exhibits to this opposition—demonstrate that each of CAFA's jurisdictional requirements are met and that no additional discovery is needed before denying Plaintiffs' motion.

ARGUMENT

I. LEGAL STANDARD

Courts typically address challenges to removal by assessing whether the plaintiff has asserted

a facial or factual challenge to the notice. A "factual" attack contests the truth of the factual allegations, usually by introducing evidence outside the pleadings *Salter v. Quality Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) (citation omitted). When the party seeking remand raises a factual attack, the removing party must support their jurisdictional allegations with competent proof. *Id.* A "facial" attack, on the other hand, accepts the truth of the ***removing*** party's allegations, but asserts that they are insufficient on their face to invoke federal jurisdiction. *Id.* (citation omitted). Facial attacks are resolved in the same way as Rule 12(b)(6) motions. *Id.* That is, courts will accept the allegations in the notice of removal as true, draw all reasonable inferences in the non-moving party's favor, and determine whether the allegations are sufficient as a legal matter to invoke jurisdiction. *Id.* (citation omitted). Notably, when the party challenging removal asserts only a facial attack, the removing party need not present evidence outside the notice of removal. *Id.*

Regardless of which type of attack Plaintiffs have attempted to make against Defendants' submission, their removal withstands both a facial ***and*** factual challenge. Defendants have plausibly alleged each requirement for this Court to exercise original jurisdiction. And they have provided sufficient evidence to establish it.

II. THE PLAINTIFFS' FACIAL CHALLENGE TO THE ANOR FAILS.

A. The ANOR Plausibly Establishes Federal Jurisdiction Under CAFA.

Plaintiffs' only direct challenge to the ANOR is their contention that it is facially deficient because "Defendants . . . fail to plausibly allege any methodology or calculation to reach CAFA's $5 million amount in controversy, let alone a result of that calculation."[1] (Motion to Remand, 5:9-10.) However, at the removal notice stage, the Supreme Court has made clear that the notice of removal need only contain "a short and plain statement of the grounds for removal," because "[b]y design, § 1446(a) tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure," and such language was "intended to 'simplify the "pleading" requirements for removal' and to clarify that courts should 'apply the same liberal rules [to removal allegations] that are applied

[1] Plaintiffs do not challenge Defendants' ANOR on any other grounds required for federal jurisdiction under CAFA. Plaintiffs do not dispute the fact that there are more than 100 members in the putative class or that the parties are minimally diverse. *See* 28 U.S.C. § 1332(d)(2), (5)(B)).

to other matters of pleading.'" *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87-88 (2014), *quoting* 28 U.S.C. § 1446(a), and H.R.Rep. No. 100–889, p. 71 (1988)). The "short and plain statement" standard applies whether the amount-in-controversy is alleged in the plaintiff's complaint, or as it is here, the amount-in-controversy is put forth by the defendant in their removal notice. *Id.*

With respect to the sufficiency of the short plain statement, the Court also held in *Dart* that the pleading standard of "plausibl[ity]" governs whether an amount-in-controversy stated in a removal notice is capable of surviving a facial challenge. *Id.* at 87 (holding that allegations, as pleaded, "should be accepted when not contested by the plaintiff or questioned by the court."); *see Salter*, 974 F.3d at 964 (A notice of removal "need not contain evidentiary submissions but only plausible allegations of jurisdictional elements.") (internal citations omitted). In overturning the district court's order remanding the case, the Ninth Circuit in *Salter*, held that a facial challenge to a removal notice should have been denied because "the inherent nature of 'plausible allegations'" is that "they rely on 'reasonable assumptions,'" which, at the removal notice stage, where a plaintiff has not alleged an amount-in-controversy, are grounded in "the reality of what is at stake in the litigation, using reasonable assumptions underlying the defendant's theory of damages exposure." *Salter*, 974 F.3d at 963–965, *citing Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015) and *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019).

Defendants' statement regarding the alleged amount-in-controversy in their ANOR plausibly establishes the $5 million threshold for federal jurisdiction under CAFA. (*See* ANOR, ¶¶ 12-14.) Contrary to Plaintiffs' claim that the ANOR lacks "methodology," the relief claimed in this case is not so complicated that a simple calculation will not suffice. Plaintiffs seek a judgment that (1) amounts owed by the putative class members be cancelled or rendered uncollectable, and (2) that Defendants be required to pay to the putative class members the money they have paid to Defendants to date, which amounts total "up to $30,000" per student. (*See* Complaint, ¶¶ 3, 47, 110, 112, 119, 126, 136, 173, Prayer For Relief ¶¶ 4, 9-10.) In other words, whether a putative class member paid $1,000 towards his or her tuition or the full $30,000, under either example, if Plaintiffs prevail in proving their allegations, "up to $30,000" per putative class member is in controversy in this action

through the combination of a potential inability to collect on the amounts owed and repayment of money to class members.

As for the number of putative class members, Plaintiffs assert that "there are thousands of former Lambda students who are members of the Class, and at least hundreds who are members of the BPPE Subclass." (Compl. ¶ 146; *see also id.* ¶¶ 2, 3). Exhibit L, Page 7, to the Complaint—and many of the other documents incorporated by reference—further plausibly allege a putative class of Plaintiffs that is in the several thousands. (Compl., Exhibit L ("In 2019 we'll enroll over 3,000 students. In May 2019 we'll enroll over 500. We plan on enrolling more than 10,000 students in 2020."); *see id.* ¶¶ 28, 71-73, 76-77, 79, 81, 84, 86.) With the $30,000 amount per putative class member in mind, and taking Plaintiffs' allegations in their Complaint as true, there is no question that the "thousands" of putative class members alleged in the Complaint places a number far greater than $5 million in controversy by virtue of the basic fact that Plaintiffs' own Complaint places $30,000 ***per student*** in the class in controversy.

Moreover, even if Plaintiffs' claim of "thousands" were assumed to be an exaggeration offered for effect, then looking to the lowest possible number to meet the $5 million CAFA threshold, it would only take 167 putative class members (167 x $30,000) to get there. Based on the allegations in the Complaint, the number of putative class members is significantly greater than 167, and Plaintiffs appear to acknowledge that fact by not arguing in their Remand Motion for any specific number of class members that would undermine their claim that "thousands" of students are in the potential class (and they certainly do not claim that less 167 people should be part of the class). If Plaintiffs believed they could avoid federal jurisdiction by trying to define the class as sufficiently small such that it would lower the amount-in-controversy below the $5 million threshold, then Defendants assume they would have raised that challenge, which their Remand Motion unambiguously does not do.

Based on the number of putative class members alleged in the Complaint and their respective claims for $30,000 each in relief, the ANOR plausibly establishes federal jurisdiction under CAFA.

B. <u>Plaintiffs' Facial Challenge to the $30,000 Per Plaintiff Alleged In Their Own Complaint Fails.</u>

Plaintiffs' facial challenge to the ANOR focuses only on the amount of "up to $30,000" per putative class member, which they now claim is the incorrect figure to apply per student. Plaintiffs' contention is that Defendants should not be able to use a baseline of $30,000 per student because "the pecuniary result to either party of a judgment in Plaintiffs' favor," they contend, should be "the value of repayments of all amounts *paid* towards ISAs." (Remand Motion, 5:21-23, *citing Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 775 (9th Cir. 2017) ("[T]he test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce.").) Plaintiffs' apparent basis for only counting "amounts paid towards ISAs" in their amount-in-controversy calculation is their contention that "any debt created by the ISAs is *conditional* on the student getting a qualifying job to trigger payment obligations." (Remand Motion, 6:7-12.) Plaintiffs' contention—which should be bookmarked for the Court's review when it turns to Defendants' Motions to Dismiss as it ***directly establishes that at least two of the named Plaintiffs in this action do not have standing to assert unfair competition claims***—is meritless.

> As explained by the Ninth Circuit:
>
> To meet CAFA's amount-in-controversy requirement, a defendant needs to plausibly show that it is reasonably possible that the *potential* liability exceeds $5 million. As our court has noted, the amount in controversy is the "amount *at stake* in the underlying litigation. "Amount at stake" does not mean likely or probable liability; rather, it refers to possible liability.

Greene v. Harley-Davidson, Inc. 965 F.3d 767, 772 (9th Cir. 2020) (internal citations and quotations omitted) (emphasis in original). Put differently, the "amount in controversy" represents "the *maximum* recovery the plaintiff could reasonably recover." *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (emphasis in original). It is "an estimate of the total amount *in dispute*." *Id.*; *cf. Castellucci v. JPMorgan Chase,* No. 2:21-CV-02321-AB-KS, 2021 WL 1575233, at *3 (C.D. Cal. Apr. 22, 2021), *appeal dismissed sub nom. Castellucci v. JPMorgan Chase Bank, N.A.*, No. 21-55554, 2021 WL 5859452 (9th Cir. Sept. 21, 2021) (where homeowner sought to enjoin foreclosure, and thereby prevent the bank from collecting on the amount owed on the mortgage, the total amount-in-controversy was the outstanding mortgage amount the bank would be barred from collecting). In *Corral*, the very case cited in Plaintiffs' Motion, the Ninth Circuit reiterated that in the context of home foreclosure disputes the "'either viewpoint' rule" applies,

which prescribes "the test for determining the amount in controversy [as] the pecuniary result to either party which the judgment would directly produce." *Corral*, 878 F.3d at 775 (quotation omitted). The rule holds that the burden of establishing an amount-in-controversy is satisfied by showing *either* that the benefit to the putative class exceeds the amount-in-controversy, *or* that the cost to the Defendants exceeds the amount-in-controversy. *See id.*

As stated above, the Complaint, at its core, primarily seeks two types of relief (excluding attorneys' fees, which are addressed below) to which a monetary value is readily ascribed under these standards: (1) repayment for all money paid to Defendants (which Plaintiffs acknowledge is an amount in controversy); and (2) cancellation of all existing ISAs or other tuition payment plans (which Plaintiffs do not acknowledge as an amount in controversy). (*See* Compl., Prayer For Relief ¶¶ 4, 9-10.) Plaintiffs' claim that the ISAs and other tuition payment plans are "conditional," and therefore, according to them, should not be counted toward the total, is nothing but a red herring. As they have alleged in their Complaint, specifically as it pertains to the ISA's terms, a student's obligation to pay money does not arise until they are placed in a "qualified position" as defined by the ISA (which is generally characterized as a job in a technology field). (*See* Compl., Exhs. A-D.) But Plaintiffs' argument raises the wrong question.

Whether a given student will ever find a qualified position and be obligated to make payments under their ISA is a different question than whether Defendants will be able to enforce or collect on that student's ISA. The former question makes collectability under a given ISA an unknown, but the latter question, if decided in Plaintiffs' favor, imposes with certainty that collectability will be impossible. Moreover, contrary to Plaintiffs' claim that Defendants are engaged in "speculation and conjecture, with unreasonable assumptions," in counting the maximum of "up to $30,000" alleged in the Complaint towards the amount-in-controversy, the Plaintiffs rely on far greater speculation with regard to students' future prospects for finding a qualified position than Defendants' sum-certain loss of money if they are barred from enforcing ISAs under any circumstance—which is ***exactly*** what Plaintiffs' Complaint aims to do. (Remand Motion, 6:4-7.)

Defendants' "exposure" for purposes of the amount-in-controversy is the amount of money they stand to lose, should Plaintiffs prevail, *Salter*, *supra*, 974 F.3d at 963, or, looking in the other

direction, $30,000 is the "*maximum* recovery" each Plaintiff can expect to gain as members of the putative class, *Arias*, *supra*, 936 F.3d at 927. Whether Defendants' pecuniary loss is suffered by the repayment of money or the inability to collect money, they both lead to the same result. Under either measure, Defendants will be barred from collecting up to $30,000 for every successful putative class member. To put it another way, for purposes of calculating the amount in controversy, Plaintiffs have provided no reason to believe that there is any practical difference between a dollar repaid and a dollar no longer owned from the perspective of the borrower; in either case the borrower is a dollar richer and the lender a dollar poorer.

Plaintiffs' second attempt at a facial challenge argues that future payments on ISAs cannot be counted toward the amount-in-controversy because "actual or hypothetical post-removal payments made towards the $30,000 maximum ISA value are irrelevant, making the $30,000 figure itself irrelevant." (Remand Motion, 7:10-11.) As an initial matter, it is contradictory that Plaintiffs assert that the $30,000 figure should be considered "irrelevant" now that they are attempting to resist federal jurisdiction, when Plaintiffs' Complaint includes the $30,000 figure at least ten times as the measure of harm to the putative class members. (*See* Complaint, ¶¶ 3, 25, 47, 110, 112, 119, 126, 136, 173.) But, setting aside that apparent inconsistency, their assertion that post-filing payments to Defendants cannot be counted to the amount-in-controversy is of no import.

Plaintiffs' string cite seven cases that, curiously, fail to cite any binding and on point Ninth Circuit precedent. If they had, such authorities would remind the Court that:

> When we say that the amount in controversy is assessed at the time of removal, we mean that we consider damages that are *claimed* at the time the case is removed by the defendant. . . . That the amount in controversy is assessed at the time of removal does *not* mean that the mere futurity of certain classes of damages precludes them from being part of the amount in controversy. . . . In sum, the amount in controversy includes all relief *claimed* at the time of removal to which the plaintiff would be entitled if she prevails.

Chavez v. JPMorgan Chase & Co., 888 F.3d 413, 417-18 (9th Cir. 2018) (emphasis added). Again, at the time of removal, Plaintiffs claimed entitlement to two types of relief (excluding attorneys' fees): (1) refunds for all payments made; and (2) cancellation of all existing ISAs or other tuition payment plans. As set forth above, the value of that relief is $30,000 per putative class member, which equals the benefit to them (and Defendants' corresponding loss) of the relief from money

owed. The fact that future payments may be made after removal says nothing about the amount-in-controversy. As explained in *Chavez*, "the mere futurity of certain classes of damages" does not "preclude[] them from being part of the amount in controversy." *Id.* at 417-18.

Plaintiffs' third facial challenge is not really a challenge at all, but an unsupported claim that "many students, including Plaintiff Jessica Fuller, withdrew early in the program to significantly reduce that $30,000." (Remand Motion, 7:12-13.) Plaintiffs do not provide any further detail, or even a rough estimate, regarding the number of students it considers to be "many." Even more speculative is the claim that the reduction to the $30,000 for students who withdraw early is "significant[]" without providing any detail as to how much should be discounted off of the baseline $30,000 offered in their Complaint. Had Plaintiffs offered such allegations, it may have been possible to determine a potential reduction to the amount-in-controversy, but no such information was provided, let alone alleged in even the most hypothetical of numerical terms.

Defendants contend the reason no such information was provided is because the "many" students from the "thousands" alleged in the Complaint would have to be so outsized, and the "significantly reduce[d]" tuition amount so drastic, for it to reduce the amount-in-controversy below $5 million dollars such that Plaintiffs could not credibly offer such claims. For example, as pointed out above, assuming *arguendo* a class numbering 1,000 members, even if only 167 (16.7 percent, meaning an implausible 83.3 percent would have hypothetically withdrawn early) out of the hypothetical 1,000-member putative class were obligated for the full $30,000, the amount-in-controversy is still satisfied. Moreover, even though the 167 at $30,000 meet the requirement on their own, that forgets the fact some or all of the at least 833 other class members described in Plaintiffs' Complaint are obligated to pay at least some amount greater than zero. Plaintiffs' unfounded claim that the amount-in-controversy cannot be met because some unstated number of students withdrew early and reduced their payment obligations under the ISA by some unexplained amount is nothing more than a speculative and conclusory assertion that fails to give the Court any credible information to find that the amount-in-controversy is not met.

The relevant measure of the amount in controversy is undoubtedly the $30,000 maximum possible value of the ISA at signing. On the face of the ANOR, and based on the allegations in

Plaintiffs' Complaint, Defendants have plausibly asserted that the putative class contains more than 100 members, that there is minimal diversity, and that the amount in controversy exceeds $5 million. Accepting the allegations in the ANOR (and the allegations in Plaintiffs' Complaint at the pleading stage) as true and drawing all reasonable inferences in Defendants' favor ***requires*** the denial of Plaintiffs' Remand Motion. Plaintiffs' arguments to the contrary offer no information that could allow the Court to find on the face of the ANOR that the case should be remanded. The Motion, therefore, should be denied.

III. PLAINTIFFS' "FACTUAL" CHALLENGE TO THE ANOR ALSO FAILS.

Although Plaintiffs' Motion only appears to offer facial challenges to the ANOR, to the extent they intended to argue a factual challenge, that argument would be unavailing as well. Plaintiffs, after all, did not offer ***any*** facts that cut against what is alleged in the ANOR, or what they alleged in their very own Complaint.

However, despite the lack of any evidence presented and the failure of Plaintiffs' efforts to challenge the Remand Motion on its face, Defendants nevertheless have diligently searched, reviewed, and assessed their records to determine that CAFA's requirements are satisfied.

Defendants have determined, based on the allegations in the Complaint, that the putative class consists of approximately 1,994 members. (Declaration of Steven Will in Support of Defendants' Opposition to Plaintiffs' Remand Motion ("Will Decl."), Exh. A.) Defendants also track the amount paid by a given student identified as a putative class member and the amount still subject to payment under any form of financing agreement entered since March 2020. Totaling the amount paid ***and*** owed by all members of the putative class equals $40,828,509. (*Id.* ¶ 4, Exh. A (combining the results in Exhs. B and C).) That amount clearly exceeds the $5 million CAFA requirement. And even if the Plaintiffs were correct that the relevant measure is limited to the amount already paid under a financing agreement, their argument fails. A diligent search of the Defendants' records shows that approximately $6,662,371 has ***already*** been paid. (*Id.*) That number too exceeds the $5 million threshold.

Defendants have also searched their records to determine the amount at stake for only those students who signed an ISA or a RIC (as opposed to another form of financing). With respect to

only students who signed ISAs and RICs, the number of students is approximately 1,549 members. (*Id.*, Exh. B.) Totaling the amount paid and owed by students who signed an ISA or a RIC equals $36,113,410, which is comprised of $1,947,272 for the amount paid and $34,166,138 for the amount outstanding. (*Id.* ¶ 5, Exh. B). Again, this exceeds CAFA's $5 million requirement. Consequently, the Plaintiffs' factual challenge, to the extent their Remand Motion can be characterized as one, is meritless.

For students who enrolled under a financing plan other than an ISA or a RIC, the amount in controversy is approximately $4,715,100. (*Id.*, Exh. C.) Non-ISA and Non-RIC students do not have outstanding amounts owed to Defendants because they have paid their amounts in full either through upfront payments or installments. This amount is added with the ISA and RIC total above and equals $6,662,371.

In light of the foregoing, none of Plaintiffs' facial or "factual" challenges to the amount-in-controversy allegations has merit. The information provided in support of Defendants' Opposition to Plaintiffs' Remand Motion establishes that the amount-in-controversy requirement is met. Consequently, Plaintiffs' Remand Motion should be denied.

IV. THE ANOR DOES NOT RELY ON ATTORNEYS' FEES TO SATISFY THE AMOUNT IN CONTROVERSY REQUIREMENT—BUT IT COULD.

To be abundantly clear, removal of this particular case does not depend on the inclusion of attorneys' fees to satisfy the amount-in-controversy requirement. As set forth above, the $5 million threshold is met regardless of whether attorneys' fees are part of the calculation.

Nevertheless, in what appears to be an attempt to lead this Court into error, Plaintiffs assert it must exclude post-removal attorneys' fees from the Defendants' amount in controversy allegations. (Remand Motion, p. 7:17-19.) As they did above, Plaintiffs ignore binding Ninth Circuit precedent and instead cite to two unpublished Northern District cases for the proposition that courts may rely on the "time-of-filing" rule to exclude post-removal attorneys' fees from the amount-in-controversy calculation. (*Id.* at 7:25-8:1). They are wrong.

Since at least 2018, the Ninth Circuit has consistently held that "a court ***must*** include future attorneys' fees recoverable by statute or contract when assessing whether the amount-in-controversy

is met." *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (emphasis added); *see, e.g.*, *Schneider v. Ford Motor Co.*, 756 Fed.Appx. 699, 701 n.4 (9th Cir. 2018); *Arias*, 936 F.3d at 922; *Greene*, 965 F.3d at 774 n.4. Plaintiffs apparently believe they are entitled to attorneys' fees under one or more of the consumer statutes raised in the Complaint. (Compl., Prayer For Relief ¶ 13.) Because Plaintiffs pray for attorneys' fees, those fees *must* be included in determining the amount in controversy. *See Fritsch*, 899 F.3d at 794. The only question, then, is what amount.

"A defendant does not need to prove to a legal certainty that a plaintiff will be awarded the proffered attorneys' fees in the removal notice. The estimated attorneys' fees must simply be reasonable." *Anderson v. Starbucks Corp.*, 556 F.Supp.3d 1132, 1138 (N.D. Cal. 2020) (internal citations and quotations omitted). While there is no rule that a 25% award is reasonable on its face, it is not necessarily uncommon in the Ninth Circuit. *See, e.g.*, *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003); *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). And citation to similar cases awarding 25% is sufficient to carry the burden. *Anderson*, 556 F.Supp.3d at 1138-39 (citing *Greene*, 965 F.3d at 772).

The ANOR's stated 25% is consistent with awards to Plaintiffs' counsel, Cotchett, Pitre & McCarthy, in similar cases. *See, e.g.*, *Linda Parker Pennington v. Tetra Tach EC, Inc.*, 2022 WL 899843, at *5-6 (N.D. Cal. Mar. 28, 2022) (Cotchett, Pitre & McCarthy requested and was awarded a 23.7% fee in settling class action alleging unfair and unlawful competition, fraud and false advertising, and misrepresentation); *In re Zoom Video Commc'ns, Inc. Privacy Litig.*, No. 20-cv-02155, 2022 WL 1593389, at *10 (Cotchett, Pitre & McCarthy requested and was awarded a 25% fee for settlement of class action alleging violations of, among others, the CLRA and UCL).

The ANOR's stated 25% is also consistent with awards to other counsel in similar cases. *See, e.g.*, *Smith v. Keurig Green Mountain, Inc.*, No. 18-cv-06690, 2023 WL 2250264 (N.D. Cal. Feb. 27, 2023) (approving 30% fee award for settlement of class action alleging violations of CLRA and UCL); *Troy v. Aegis Senior Communities LLC*, No. 16-cv-03991, 2021 WL 6129106, at *3-4 (N.D. Cal. Aug. 23, 2021) (approving 39% fee award for settlement of class action alleging violations of CLRA and UCL); *Loomis v. Slendertone Distrib., Inc.*, No. 19-cv-854, 2021 WL

873340, at *9-10 (S.D. Cal. Mar. 9, 2021) (approving 33.75% fee award for settlement of class action alleging violations of CLRA and UCL); *see also Calgano v. Rite Aid Corp.*, No. 4:20-cv-05476, 2020 WL 6700451 (N.D. Cal. Nov. 13, 2020) (approving use of 25% benchmark for CAFA jurisdiction purposes in class action alleging California FAL, UCL, and CLRA claims);

Although unnecessary, the Defendants have carried their burden to include a 25% attorneys' fee in the amount-in-controversy calculation. As set forth above, the Plaintiffs have put at least $40,828,509 in controversy. Adding 25% yields $51,035,636. That far exceeds CAFA's $5 million requirement. Even under Plaintiffs' "only refunds count" theory, they have placed $6,662,371 in controversy, if both ISA and RIC students, on the one hand, and non-ISA and non-RIC students, on the other, are included in the class. Adding 25% to that yields $8,327,964. That also exceeds CAFA's threshold. The amount in controversy requirement is satisfied. The Plaintiffs' Remand Motion should be rejected.

Of course, if Plaintiffs' counsel are willing to stipulate that they are not entitled to fees—or fees of this magnitude—Defendants would be more than willing to exclude them from these calculations. But they should not be permitted to contend ***now*** that fees on this level will not be claimed when it is a near certainty that they will eventually be requested in the unlikely event Plaintiffs prevail.

V. JURISDICTIONAL DISCOVERY IS NOT NEEDED.

Through this submission, Defendants have provided sufficient facts to confirm both that the amount-in-controversy requirement is met and that neither CAFA exception applies. To the extent Plaintiffs demand more, their request is unnecessary, overbroad, and should be denied.

True, jurisdictional discovery is permissible when a court is unable to determine, on the existing record, whether it has jurisdiction. *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977). And true, the Court has broad discretion in determining whether and how much jurisdictional discovery to permit. *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 692 (9th Cir. 2006). But jurisdictional discovery should be denied when "the request amounts merely to a 'fishing expedition.'" *Adobe Sys. Inc. v. NA Tech Direct, Inc.*, No. 17-cv-05226, 2018 WL 3304633, at *2 (N.D. Cal. July 5, 2018) (quotation omitted). Put differently, "a mere hunch that discovery

might yield jurisdictionally relevant facts, or bare allegations in the face of specific denials, are insufficient for a court to grant jurisdictional discovery." *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 507 (9th Cir. 2023).

When jurisdictional discovery is allowed, it must be "precisely focused" and "aimed at addressing matters relating to [] jurisdiction." *Rippee v. Boston Market Corp.*, 408 F.Supp.2d 982, 985 (S.D. Cal. 2005). That is especially true in cases covered by CAFA. As noted by the Senate Committee on the Judiciary:

> The Committee understands that in assessing the various criteria established in all these new jurisdictional provisions, a federal court may have to engage in some fact-finding, not unlike what is necessitated by the existing jurisdictional statutes. The Committee further understands that in some instances, *limited* discovery may be necessary to make these determinations. However, the Committee cautions that these jurisdictional determinations should be made largely on the basis of *readily available information.* Allowing substantial, burdensome discovery on jurisdictional issues would be contrary to the intent of these provisions to encourage the exercise of federal jurisdiction over class actions. ***For example, in assessing the citizenship of the various members of a proposed class, it would in most cases be improper for the named plaintiffs to request that the defendant produce a list of all class members (or detailed information that would allow the construction of such a list)***, in many instances a massive, burdensome undertaking that will not be necessary unless a proposed class is certified. Less burdensome means (e.g., factual stipulations) should be used in creating a record upon which the jurisdictional determinations can be made.

S. Rep. No. 109-14, at 44, 2005 U.S.C.C.A.N. at 42 (emphasis added); *see Rosario v. PIH Health, Inc.*, 2023 WL 2117110, at *3 (C.D. Cal. Jan. 23, 2023) (after allowing some jurisdictional discovery, citing the senate report to sustain an objection to interrogatories, stating: "The Court agrees with PIH that the requests for the name and address of each person [in the putative class] are overbroad and run afoul of the Congressional admonition that jurisdictional discovery under CAFA be limited in scope.").

As set forth in the declaration and accompanying exhibits to this opposition, approximately 326 putative class members' last known address was in California and 1,994 putative class members' last known address was outside of California. (Will Decl., ¶ 7, Exh. A.) The percentage of putative class members residing in California is therefore 16.3%, well below the one-third threshold where the Court has discretion to decline federal jurisdiction over the case. The

jurisdictional discovery provided proves, by a preponderance of the evidence, that none of CAFA's exceptions apply.

In light of Defendants' provision of this information, any continued request for authority to issue a single interrogatory requesting the name, last known address, last known phone number, last known email address, ISA signature date, date of withdrawal (if applicable) and total ISA payments as of the date of removal for each putative class members, should be denied because it does nothing more than place an undue burden on Defendants, presumably so Plaintiffs' counsel can try to find other additional potential plaintiffs after Defendants' Motion to Compel Arbitration is granted. Federal jurisdiction is already established—nothing else is needed.

To the extent Plaintiffs counter that they need more information "to cross-check with putative class members" (Remand Motion, 10:8-11)[2], whether their last known address is current, that "need" is ameliorated by the ISA that each of the putative class members signed, which provides:

> You must notify Lambda School no later than 30 days after change in your primary residence, your phone number, email address, or any other contact information you previously provided Lambda School.

(Compl., Exhibits A, B, C, D.)[3] The requirement to provide current information combined with the substantial cushion of non-California class members identified in the discovery already delivered to Plaintiffs is sufficient to heed off their alleged "need" for additional information. *See, e.g.*, *Adams v. W. Marine Prods., Inc.*, 958 F.3d 1216, 1223 (9th Cir. 2020) ("[R]equiring a district court to

[2] Of course, on the other hand, if the Court wishes to cross-check the data provided in support of this submission, Defendants would request an *ex parte* process that, provides the Court with such assurances, but also respects the privacy rights of their students along the way.

[3] If that is the case, Plaintiffs' assertion that they "propose limited discovery" including "a single interrogatory" is misleading. Why would the Plaintiffs need full names, emails, or phone numbers of *putative class members* if they believe the jurisdictional question can be resolved with a single interrogatory to *Bloom*? They do not. Email addresses and phone numbers will not aid the Court in deciding whether the amount in controversy is met or deciding that less than one-third of the putative class resides in California. Rather, it seems that personally identifying information, of the kind requested by Plaintiffs, is not only personally intrusive to members of the putative class given the nascent stage of this lawsuit, but also meant to extract discovery in advance of the Court's decision on Defendants' pending Motion to Compel Arbitration and without the benefit of a Rule 26(f) conference.

examine the domicile of every proposed class member before ruling on the citizenship requirement would render class actions totally unworkable. Rather, CAFA requires only [a showing], by a mere preponderance of the evidence, that the citizenship is requirement is met.") (internal citations and quotations omitted); *see also Mondragon v. Capital One Auto Finance*, 736 F.3d 880, 885-86 (9th Cir. 2013) ("[O]nce established, a person's state of domicile continues unless rebutted with sufficient evidence of change."); *Anderson v. Watts*, 138 US. 694, 706 (1891) ("The place where a person lives is taken to be his domicile until facts adduced establish the contrary.").

At most, all Plaintiffs have offered the Court in support of their alleged need for broader jurisdictional discovery is their bald claim that jurisdictional discovery is needed because: "California is the most populous state, the locus of tech work in America, and home of Defendant Bloom's headquarters." That is insufficient and offers nothing more than the speculation and conjecture Plaintiffs complained of in the Remand Motion. Plaintiffs have not established—and cannot establish—how additional discovery would be beneficial to the Court's jurisdiction determination. The request for jurisdictional discovery must be denied.

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny Plaintiffs' Remand Motion in its entirety, including their request for jurisdictional discovery, and award any such other and further relief to which Defendants may be entitled.

Dated: May 17, 2023

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