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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHAUNA ROSSINGTON, et al.,  
  
Plaintiffs,  
  
v.  
  
MOUNTAIN CIRCLE FAMILY  
SERVICES, INC., et al.,  
  
Defendants.

No. 2:23-CV-00423-KJM-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiffs, who are proceeding pro se, bring this civil action. Pending before the Court are the following motions, noticed before the undersigned in Redding, California:

ECF No. 36 Defendant Berry’s Anti-Slapp Special Motion to Strike Plaintiff’s First Amended Complaint.

ECF No. 38 Plaintiffs’ Motion to Remand.

ECF No. 45 Defendants Mountain Circle Family Service, Inc., DBA Sierra Nevada Connections, Justin Miller, Pamela Crespin, Katherine Van Dolsen, Angie Carpenter, Shannan Duong, Bill Powers, and Kacey Reynolds (“Mountain Circle Defendants”) motion to dismiss Plaintiffs’ first amended complaint pursuant to FRCP 12(b)(6) or, in the alternative, motion for a more definite statement of facts pursuant to FRCP 12(e).<sup>1</sup>

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<sup>1</sup> Plaintiffs and Mountain Circle Defendants stipulated to a stay with regard to the Mountain Circle Defendants’ Motion to dismiss, ECF No. 45, so that the parties could engage in

1 Each motion is opposed. See ECF Nos. 39, 41, 44, 46, 49-55. Consent to Magistrate Judge  
2 jurisdiction is not unanimous. See ECF Nos. 7, 13-15, 18-22, 28-29. The Parties appeared for a  
3 telephonic hearing before the undersigned on June 21, 2023, wherein the matter was submitted.  
4

### 5 **I. PROCEDURAL HISTORY**

6 On February 6, 2023, Plaintiffs Shauna Rossington, Alex Rossington, Aiden  
7 Rossington, Joseph Coddington, and Valerie Peters filed their original complaint against  
8 Mountain Circle Defendants and Defendant Robert Berry in the Superior Court of the State of  
9 California, County of Butte. See ECF No. 1, pg. 8. Plaintiffs alleged: (1) Failure to  
10 Accommodate FOIA Rights; (2) Failure to Comply with Evidence Code § 945 – Attorney-Client  
11 Privilege; (3) Failure to Accommodate Labor Code § 1198.5; (4) Failure to Comply with Terms  
12 of Contract; (5) Retaliation in Violation of FEHA, Gov. Code § 12900 et seq.; (6) Failure to  
13 Engage in Good Faith and Fair Dealing Upon Dismissal; (7) Failure to Comply with the Brown  
14 Act; (8) Failure to Comply and in Violation of 5 U.S.C. § 552a(b); and (9) Wrongful  
15 Termination in Violation of the Brown Act. See ECF No. 1, pg. 8.

16 The matter was removed under this Court’s federal question jurisdiction on March  
17 7, 2023. See ECF No. 1. Defendants contended removal was proper based on Plaintiffs’ First  
18 Cause of Action, Failure to Accommodate FOIA Rights under 5 U.S.C. § 552, and Eighth Cause  
19 of Action, “Failure to Comply and In Violation of 5 U.S.C. § 552a(b).” Id., pg. 3. Following  
20 removal, Mountain Circle Defendants filed a motion to dismiss, Defendant Berry filed a motion  
21 to dismiss and motion to strike, and Plaintiffs’ filed a motion to remand. See ECF Nos. 6, 8, 9,  
22 11. Plaintiffs then filed a motion to amend the complaint and motion to amend the motion to  
23 remand. See ECF Nos. 12, & 16. On April 4, 2023, the Court issued a minute order advising  
24 Plaintiffs their motions at ECF Nos. 12 and 16 were defectively noticed. See ECF No. 17.  
25 Specifically, these motions were set for hearing less than 35 days after filing, in violation of  
26 Eastern District of California Local Rule 230. See id. The minute order vacated the hearing on  
27 \_\_\_\_\_  
28 the Voluntary Dispute Resolution Program. See ECF No. 56. As such, ECF No. 45 was not  
addressed by the undersigned.

1 Plaintiffs’ initial motion to remand, which was noticed for September 6, 2023. See id. The Court  
2 instructed Plaintiffs to re-notice the defectively noticed motions. See id.

3 As to Plaintiffs’ motion for leave to amend, the Court found it unnecessary  
4 because Plaintiffs’ motion for leave to amend was filed within 21 days of Defendants’ motions to  
5 dismiss, so leave of court was not necessary to amend the original complaint. See id. (quoting  
6 Fed. R. Civ. P. 15(a)(1)(B)). Plaintiffs’ proposed first amended complaint was filed on March 29,  
7 2023. ECF No. 35. In their first amended complaint, Plaintiffs no longer alleged claims under 5  
8 U.S.C. § 552 or 5 U.S.C. § 552a(b), the basis for removal, and only state-law pendent claims  
9 remained. See id. No complete diversity exists. See id. Since the Court directed Plaintiffs’ first  
10 amended complaint filed, Defendants’ motions challenging the original complaint were rendered  
11 moot. See ECF No. 34.

12 As to Plaintiffs’ motion to remand and related motion to amend their motion to  
13 remand, those motions were premised on the argument that by excluding federal claims, remand  
14 would be appropriate. See ECF Nos. 11, 16, 34. The Court denied without prejudice these  
15 motions, subject to renewal in the future, and directed the Parties to meet and confer in light of  
16 the state claims raised in the first amended complaint. See ECF No. 34. Thereafter, the pending  
17 motions were filed. See ECF Nos. 36, 38, 45.

## 18 19 **II. PLAINTIFF’S ALLEGATIONS**

20 Plaintiffs’ allegations stem from the termination of their employment with  
21 Mountain Circle Family Service, Inc., (“MCFS”), on or about August 4, 2021. See ECF No. 35,  
22 pgs. 7-20. More specifically, Shauna Rossington was the Executive Director for MCFS and was  
23 hired by the Board of Directors. See ECF No. 1, pg. 12-13. Plaintiffs allege that Shauna  
24 Rossington was “strategically terminated” when the Board “illegally” convened on August 4,  
25 2021. Id. Plaintiffs allege that Defendant Berry sent an email to all Plaintiffs accusing them of  
26 “cyber hacking” and stating “you will all be listed as co-conspirators in this criminal activity.”  
27 See id., pgs. 13-14. As to the other Plaintiffs, they contend they were terminated “on the basis of  
28 their relationship” with Shauna Rossington, and in furtherance of Defendants’ “political

1 aspirations.” Id., pgs. 17, 19. Plaintiffs assert the Board meeting on August 4, 2021, was  
2 “unauthorized, illegal, and in violation of the Brown Act, where [the] . . . authority [was granted]  
3 to interim Executive Director, [Defendant] Van Dolsen to terminate employees on the basis of  
4 their ‘relationship’ with [Shauna] Rossington.” Id., pg. 20. Plaintiffs allege Defendant Berry was  
5 an “unauthorized” agent giving advice to the Board of Directors at the August 4, 2021, Board  
6 meeting, and who is now counsel for the Board of Directors of MCFS. See id., pg. 5. All  
7 Defendants, except for Berry, are current or former Board members or employees of MCFS. See,  
8 ECF No. 45, pg. 8.

### 10 III. DISCUSSION

11 Plaintiffs contend federal court jurisdiction is now improper, because the federal  
12 claims upon which removal was based are no longer alleged in the first amended complaint. See  
13 ECF Nos. 38, pg. 3 & 50, pg. 7. Defendant Berry makes two overarching arguments in  
14 opposition: (1) that remand would be improper because jurisdiction is determined at the time of  
15 removal and any post-removal amendments do not defeat jurisdiction, and (2) the Court has the  
16 power to retain jurisdiction when the complaint is amended to eliminate the basis for removal,  
17 based on 28 U.S.C. § 1367(c), and in the interests of “economy, convenience, fairness, and  
18 comity.” See ECF No. 41, pgs. 2-3 (citing Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th  
19 Cir. 1997), supplemented, 121 F.3d 714 (9th Cir. 1997), as amended (Oct. 1, 1997)).

20 When a case “of which the district courts of the United States have original  
21 jurisdiction” is initially brought in state court, the defendant may remove it to federal court. 28  
22 U.S.C. § 1441(a). Upon removal to federal court, the court shall “have supplemental jurisdiction  
23 over all other claims that . . . form part of the same case or controversy.” 28 U.S.C. § 1367(a).  
24 However, when federal claims are eliminated from the complaint, a court may properly refuse  
25 supplemental jurisdiction over related state claims. See 28 U.S.C. § 1367(c)(3); Carnegie-Mellon  
26 Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988); United Mine Workers v. Gibbs, 383 U.S. 715  
27 (1966) (noting whether state law claims “should ” be dismissed if federal claims are dismissed  
28 before trial does not mean they must be dismissed; while courts “shall have supplemental

1 jurisdiction under § 1367(a), they “may” decline to exercise it under § 1367(c)”). Once all  
2 federal claims have been dismissed from a case, whether to retain jurisdiction over any remaining  
3 state law claims is left to the discretion of the district court “upon a proper determination that  
4 retaining jurisdiction over the case would be inappropriate.” Carnegie–Mellon, 484 U.S. at 357;  
5 Acri, 114 F.3d at 1000.

6 Under Gibbs and Carnegie-Mellon, a federal court should “consider and weigh in  
7 each case, and at every stage of the litigation, the values of judicial economy, convenience,  
8 fairness, and comity in order to decide whether to exercise jurisdiction” over a case involving  
9 pendent state-law claims. Carnegie-Mellon Univ., 484 U.S. at 350 (quoting Gibbs, 383 U.S. at  
10 726-27). A plaintiff’s attempt to manipulate the forum may also be considered in determining  
11 remand. Id. at 357. Generally, if federal claims are dismissed prior to trial, state law claims should  
12 be remanded to state court “both as a matter of comity and to promote justice between the parties,  
13 by procuring for them a surer-footed reading of applicable law.” Gibbs, 383 U.S. at 726;  
14 Carnegie-Mellon Univ., 484 U.S. at 350 n.7 (noting that “in the usual case in which all federal-  
15 law claims are eliminated before trial, the balance of factors to be considered . . . will point  
16 toward declining to exercise jurisdiction over the remaining state-law claims.”). In fact, “state law  
17 claims ‘should’ be dismissed if federal claims are dismissed before trial.” Acri, 114 F.3d at 1000;  
18 Wren v. Sletten Const. Co., 654 F.2d 529, 536 (9th Cir. 1981) (“When the state issues apparently  
19 predominate and all federal claims are dismissed before trial, the proper exercise of discretion  
20 requires dismissal of the state claim.”).

21 As to Defendant Berry’s first argument, contending that remand would be  
22 improper because jurisdiction is determined at the time of removal and any post-removal  
23 amendments do not defeat jurisdiction, Defendant Berry’s argument is not applicable here.  
24 Defendant Berry argues this Court should not remand this matter because jurisdiction is  
25 determined at the time of removal, yet fails to address the governing authority of Gibbs or  
26 Carnegie-Mellon, the two seminal cases on this issue. Instead, Defendant Berry cites cases in  
27 which removal was based on diversity, United Steel, Paper & Forestry, Rubber, Mfg., Energy,  
28 Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co., 602 F.3d 1087 (9th

1 Cir. 2010), and In re Burlington N. Santa Fe Ry. Co., 606 F.3d 379 (7th Cir. 2010), or exclusive  
2 federal jurisdiction in Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209  
3 (9th Cir. 1998), abrogated on other grounds by Merrill Lynch, Pierce, Fenner & Smith Inc. v.  
4 Manning, 578 U.S. 374 (2016). See ECF NO. 41, pgs. 2-3. Jurisdiction in this case, however,  
5 was based on federal question.

6           Where a court has jurisdiction based on statute, that jurisdiction is not  
7 discretionary, it is mandatory—like diversity or exclusive jurisdiction. See Carnegie-Mellon, 484  
8 U.S. at 356 & n.12 (distinguishing St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283,  
9 58 (1938), where the Court held remand impermissible because subsequent events to removal,  
10 which reduced the amount in controversy, did not oust the district court’s diversity jurisdiction);  
11 see also Sparta Surgical Corp., 159 F.3d at 1211 (citing 15 U.S.C. § 78aa where district courts  
12 “shall have exclusive jurisdiction”). In contrast, when a removed case involves pendent state-law  
13 claims, a district court has “undoubted discretion to decline to hear the case.” Carnegie-Mellon  
14 Univ., 484 U.S. at 356; Gibbs, 383 U.S. at 726 (emphasizing “pendent jurisdiction is a doctrine of  
15 discretion” not of right). Removal in those cases cited by Defendant Berry was not based on  
16 federal question or concerning supplemental jurisdiction, like here; thus, they are not instructive  
17 or persuasive. Therefore, remand would not be improper, because whether a court retains  
18 jurisdiction with pendent state-law claims is discretionary.

19           To the extent Defendant Berry implies Plaintiffs’ actions of amending their  
20 complaint to exclude federal claims in order to remand were manipulative, such contention is not  
21 supported. See ECF No. 41, pg. 2. Plaintiffs assert that the filing of their first amended complaint  
22 was not “filed in response to an unfavorable ruling” and that the federal claims were “auxiliary  
23 causes of action” and not the foundation for their wrongful termination case. ECF No. 50, pgs. 6,  
24 10. It appears the dismissed federal claims relate to a separate matter involving the Labor  
25 Commissioner and unused vacation pay, not to the allegations of wrongful termination based on  
26 purported violations of state law. See ECF No. 35, pg. 13. In any event, filing federal claims in  
27 state court is a “legitimate tactical decision.” Baddie v. Berkeley Farms, Inc., 64 F.3d 487, 491  
28 (9th Cir. 1995) (finding nothing “reprehensible” about plaintiffs’ “straight-forward tactical

1 decision”; plaintiffs’ pleading practices of dropping federal claims after removal and solely to  
2 obtain remand were not “manipulative”); Briarwood Cap., LLC v. KBR Grp., LLC, No. 09-CV-  
3 02680 BEN AJB, 2010 WL 1525453, at \*3 (S.D. Cal. Apr. 14, 2010) (noting “[t]his is also not a  
4 case where plaintiffs initiated their action in this court and later decided to, instead, avail  
5 themselves of state court jurisdiction by abandoning their only federal claim. Plaintiffs have  
6 always sought, and continue to seek, state court jurisdiction”). Thus, Plaintiffs actions do not  
7 appear to be contriving or manipulating, here.

8           As to Defendant Berry’s second argument, that the Court has the power to retain  
9 jurisdiction when the complaint is amended to eliminate the basis for removal, based on 28  
10 U.S.C. § 1367(c), and in the interests of “economy, convenience, fairness, and comity,” such  
11 assertion is true; however, the undersigned does not recommend exercising that discretion in this  
12 instance. According to Defendant Berry, “remand is not in [Plaintiffs’] best interests and would  
13 be entirely unfair to them, without even reaching the issue of the lack of economic efficiency for  
14 all involved, including the court system.” ECF No. 41, pg. 2. He argues that Plaintiffs cannot  
15 overcome his anti-SLAPP motion and remanding the case will only “increase the monetary  
16 liability which Plaintiffs already face.” Id. Defendant Berry also notes “the harsh reality as to  
17 why Plaintiffs’ best interest lies in the consideration of the conditions of economy and fairness”  
18 because retaining jurisdiction, “minimizes the expense and delay caused by shuttling a case from  
19 court to court.” Id. He contends that Plaintiffs should have a vested interest in resolving the issues  
20 against him, which “should supersede any interest they have in litigating in state court.” Id.

21           Plaintiffs respond that it is the Defendants who have created an “issue of  
22 economy” by “side-stepping” a response to their first amended complaint by the filing of motions  
23 to dismiss and Defendant Berry’s anti-SLAPP motion. ECF No. 51, pgs. 2-3. Plaintiffs also  
24 assert that Defendants did not have unanimity before filing their removal<sup>2</sup> and that removal was  
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26           <sup>2</sup> The undersigned recommends declining to rule on Plaintiffs’ contentions as to  
27 procedural defects in Defendants’ removal. Plaintiffs failed to address the issue of unanimity in  
28 their operative motion to remand, ECF No. 38, and only argue them here on reply. See ECF No.  
50; cf. ECF No. 38 with ECF No. 11.

1 improper based on Defendants’ defensive argument. See id.<sup>3</sup>

2 In this instance, the interests of comity and justice are best served by declining to  
3 exercise supplemental jurisdiction. Only state-law claims regarding the purportedly wrongful  
4 termination of Plaintiffs’ employment against MCFS and the individual defendants, remain  
5 before this Court. Consequently, the Parties’ disputes are best resolved by the State court, since  
6 the role of the federal courts in addressing state law claims is to attempt to divine how the  
7 California Supreme Court would determine any particular issue. See Vernon v. City of Los  
8 Angeles, 27 F.3d 1385, 1391 (9th Cir. 1994); Curiel v. Barclays Capital Real Estate Inc., No. S-  
9 09-3074 FCD/KJM, 2010 WL 729499, at \*1 (March 2, 2010) (“[The] primary responsibility for  
10 developing and applying state law rests with the state courts.”). Furthermore, because Defendant  
11 Berry’s anti-SLAPP motion is brought pursuant to California law, based on principles of comity,  
12 it should be heard by the State court. See Briarwood, 2010 WL 1525453, at \*4 (remanding  
13 case and declining to decide anti-SLAPP motion as judicial comity and courtesy requires the state  
14 court to decide the issues). This is a task for which the State court is better suited and declining to  
15 exercise supplemental jurisdiction here is appropriately respectful of the dual sovereignty of the  
16 federal and state governments.

17 Moreover, because this matter has not proceeded past the initial pleading stage,  
18 judicial economy does not compel the exercise of supplemental jurisdiction over Plaintiffs’  
19 remaining state law claims. See e.g., Aguaristi v. Cty. of Merced, No. 1:18-cv-01053-DAD-EPG,  
20 2022 WL 2392621, at \*18 (E.D. Cal. July 1, 2022) (finding judicial economy did not compel the  
21 exercise of supplemental jurisdiction over plaintiff’s remaining state law claims where the  
22 pending motion for summary judgment was “only the second motion filed in this case on which  
23 the court has ruled”); Zayas v. Navarro, No. 221CV00218WBSDBP, 2023 WL 2815590, at \*6  
24 (E.D. Cal. Apr. 6, 2023) (recommending court decline to exercise supplemental jurisdiction  
25 because only state law claims remained after dismissal of claims over which court had original  
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27 <sup>3</sup> Plaintiffs argument here is misguided. Defendants’ removal was not based on the  
28 applicability of any defensive argument, but on the federal causes of action Plaintiffs alleged in  
their original complaint. See ECF No. 1, pg. 7.



1 jurisdiction); Cobb v. JPMorgan Chase Bank, N.A., No. C 12-01372 JSW, 2012 WL 5335309, at  
2 \*9 (N.D. Cal. Oct. 26, 2012), aff'd sub nom. Cobb v. JPMorgan Chase Bank NA, 594 F. App'x  
3 395 (9th Cir. 2015) (declining to exercise supplemental jurisdiction because it would be equally  
4 convenient for the parties to try the only remaining state law claims in state court and the court  
5 had expended few resources in supervising the case). As a result, the undersigned recommends  
6 declining to exercise discretion to retain jurisdiction and remanding the state-law claims.

7  
8 **IV. CONCLUSION**

9 Based on the above reasons, the undersigned recommends as follows:

- 10 1. Plaintiffs' motion to remand, ECF No. 38, be granted.  
11 2. This action be remanded to the Butte County Superior Court.  
12 3. All other pending motions, ECF Nos. 36 and 45, be denied without  
13 prejudice to renewal in state court.

14 These findings and recommendations are submitted to the United States District  
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
16 after being served with these findings and recommendations any party may file written objections  
17 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
18 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
19 Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: June 30, 2023



21 DENNIS M. COTA  
22 UNITED STATES MAGISTRATE JUDGE  
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