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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOROTHEA EMMONS,
Plaintiff,
v.
QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC.,
Defendant.

No. 1:13-cv474 AWI-BAM
**ORDER VACATING FINDINGS AND
RECOMMENDATIONS AND ORDERING
SUPPLEMENTAL BRIEFING**
(Docs. 14, 22)

On June 27, 2013, this Court issued Findings and Recommendations remanding this action to the Stanislaus County Superior Court on the grounds that Defendants failed to establish the jurisdictional amount in controversy to a legal certainty. (Doc. 14). In doing so, the Court relied on *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 999 (9th Cir. 2007). On August 28, 2013, Defendants filed a notice of supplemental authority. (Doc. 21). Defendants’ notice identifies the recent Ninth Circuit decision in *Rodriguez v. AT&T Mobility Services, LLC*, where the Ninth Circuit held that *Lowdermilk* has been “effectively overruled” by the Supreme Court’s decision in *Standard Fire Insurance Co. v. Knowles*, U.S. , 133 S. Ct. 1345, 185 L. Ed. 2d 439 (2013). *Rodriguez*, 728 F.3d 975, 981 (9th Cir. 2013) (“We hold that *Standard Fire* has so undermined the reasoning of our decision in *Lowdermilk* that the latter has been effectively overruled.”)

1 The Ninth Circuit found “the proper burden of proof imposed upon a defendant to
2 establish the amount in controversy requirement is the preponderance of the evidence standard.”
3 *Id.* This standard requires a defendant to “provide evidence establishing that it is ‘more likely
4 than not’ that the amount in controversy exceeds [the jurisdictional threshold].” *Korn v. Polo*
5 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204 (E.D. Cal. 2008).

6 In light of this intervening law, this Court VACATES its Findings and Recommendations
7 issued June 27, 2013. Although the Court finds that the legal question of whether Defendants
8 satisfy the preponderance of evidence standard has been adequately briefed, the Court will allow
9 the parties to file additional briefing addressing application of the preponderance of evidence
10 standard, if they wish. The Court will issue new Findings and Recommendations applying the
11 preponderance of the evidence standard after the parties’ briefing, if any, is submitted.

12 Accordingly, **IT IS HEREBY ORDERED** that:

- 13 1. The Findings and Recommendations filed June 27, 2013 (Doc. 14) are vacated;
- 14 2. Plaintiffs’ Motion for Administrative Relief for Leave for Supplemental Briefing
15 is GRANTED (Doc. 22);
- 16 3. On or before November 20, 2013, the parties may file optional supplemental
17 briefing addressing whether Defendants have satisfied the preponderance of
18 evidence standard of proof. Any supplemental briefing should not exceed five (5)
19 pages.

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21 IT IS SO ORDERED.

22 Dated: November 5, 2013

23 /s/ Barbara A. McAuliffe
24 UNITED STATES MAGISTRATE JUDGE
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