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

CHRISTOPHER WEIGHT, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

THE ACTIVE NETWORK, INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 14-CV-790 JLS (KSC)

ORDER: (1) GRANTING PLAINTIFF'S MOTION TO REMAND; AND (2) DENYING AS MOOT DEFENDANT'S MOTIONS TO DISMISS

(ECF Nos. 5, 8, 11)

Presently before the Court is Plaintiff Christopher Weight's ("Plaintiff") Motion to Remand. (ECF No. 8.) Also before the Court is Defendant The Active Network, Inc.'s ("Active") Response in Opposition (ECF No. 10), Plaintiff's Reply in Support (ECF No. 15), and Active's two Motions to Dismiss (ECF Nos. 5, 11). The Court vacated the hearings set for May 15 and June 5, 2014 and took the matters under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). (ECF Nos. 12, 16). Having considered the parties' arguments and the law, the Court **GRANTS** Plaintiff's Motion to Remand and **DENIES AS MOOT** Active's Motions to Dismiss.

1 **BACKGROUND¹**

2 Plaintiff, a citizen of California, brings this consumer-fraud class action against
3 Active, a citizen of both California and Delaware. (First Am. Compl. (“FAC”) ¶¶ 2–3,
4 ECF No. 7; Notice of Removal ¶ 10, ECF No. 1.) Active operates the sports and
5 recreation website Active.com (“the Website”), which serves as the exclusive method
6 of online registration for certain events. (FAC ¶ 9, ECF No. 7.)

7 On or about December 7, 2013, Plaintiff registered for the 2014 San Diego
8 Resolution 5k and 15k (“the Race”) via the Website, using his credit card to pay Active
9 both a \$35 registration fee and a \$3.61 processing fee. (*Id.* ¶ 10.) Allegedly without
10 Plaintiff’s knowledge or consent, registering for the Race automatically enrolled him
11 in Active’s Active Advantage program (“the Program”), which provides “discounts on
12 certain travel and outdoor gear” and future races. (*Id.* ¶ 11.) After a thirty-day free trial
13 period, Plaintiff was charged \$64.99 for an annual membership in the Program. (*Id.*)

14 Plaintiff alleges that “[s]ince at least February 2010,” Active has been placing,
15 “in small font near the bottom of the [registration] page, . . . a pre-checked selection for
16 Class members to enroll in a ‘free trial’ of the Active Advantage program, after which
17 time Class members would be billed an annual charge of \$59.99 (subsequently raised
18 to \$64.99).” (*Id.* ¶ 12.) Plaintiff alleges that thousands of California consumers have
19 been similarly misled by Active’s practice. (*Id.* ¶ 14.)

20 On February 24, 2014, Plaintiff filed this action in the Superior Court for the
21 State of California, County of San Diego. (*See* Notice of Removal Ex. 1, ECF No. 1-2.)
22 In the Complaint, Plaintiff defined the class as “[a]ll California *residents* who, within
23 four years of the filing of this Complaint, were enrolled in the Active Advantage
24 program in connection with a credit or debit card purchase they made on the Active.com
25 website.” (Compl. ¶14, ECF No. 1-2 (emphasis added).)

26 On April 4, 2014, Active removed the action to this Court. (*See generally* Notice

27 _____
28 ¹ The facts set forth in this section are drawn exclusively from Plaintiff’s First Amended
Complaint (“FAC”). (ECF No. 7). Although certain alterations to the FAC are disputed, the
facts alleged therein do not differ from those appearing in the original Complaint.

1 of Removal, ECF No. 1). Active claimed that this Court had diversity jurisdiction
2 because, “[a]ccording to Active’s enrollment and payment records, the proposed class,
3 as defined by Plaintiff, includes many ‘California residents’ who are domiciled in states
4 other than California or Delaware,” and thus citizens of other states. (*Id.* ¶ 11 (citations
5 omitted); *see also* Decl. of Stacey Fernandes in Supp. of Notice of Removal ¶¶ 3, 5,
6 ECF No. 1-3.) On April 11, 2014, Active moved to dismiss.

7 On April 30, 2014, Plaintiff filed his FAC, which defined the class to include
8 “[a]ll individuals who . . . were *citizens* of California as of February 24, 2014.” (FAC
9 ¶ 21, ECF No. 7 (emphasis added).) Subsequently, Plaintiff filed the instant Motion to
10 Remand and again moved to dismiss.

11 LEGAL STANDARD

12 In cases “brought in a State court of which the district courts of the United States
13 have original jurisdiction,” a defendant may remove the case to federal district court.
14 28 U.S.C. §1441(a). However, the removing party bears the burden of establishing that
15 federal subject-matter jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190,
16 1195 (9th Cir. 1988). Moreover, courts “strictly construe the removal statute against
17 removal jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citations
18 omitted). Therefore, “[f]ederal jurisdiction must be rejected if there is any doubt as to
19 the right of removal in the first instance.” *Id.* (citing *Libhart v. Santa Monica Dairy*
20 *Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)).

21 In general, “jurisdiction must be analyzed on the basis of the pleadings filed at
22 the time of removal without reference to subsequent amendments.” *Williams v. Costco*
23 *Wholesale Corp.*, 471 F.3d 975, 976 (9th Cir. 2006). Thus, to prevent plaintiffs from
24 manipulating the forum, generally “post-removal pleadings have no bearing on whether
25 the removal was proper.” *Abada v. Charles Schwab & Co.*, 300 F.3d 1112, 1117 (9th
26 Cir. 2002). However, when a pleading is amended to clarify the original complaint
27 rather than manipulate the forum, the court can look to the amended complaint to
28 determine whether the court exercised jurisdiction over the action at the time of

1 removal. *See, e.g., Schuster v. Gardner*, 319 F. Supp. 2d 1159, 1164–65 (S.D. Cal
2 2003).

3 ANALYSIS

4 The Class Action Fairness Act, 28 U.S.C. § 1332(d) (“CAFA”), grants district
5 courts original jurisdiction over class actions in which (1) the parties are minimally
6 diverse—in other words, at least one member of the class of plaintiffs is a citizen of a
7 state different from any defendant; and (2) the amount in controversy exceeds \$5
8 million. 28 U.S.C. § 1332(d)(2). For purposes of diversity jurisdiction, an individual
9 is the citizen of the state in which he is domiciled. *See Guinto v. Marcos*, 654 F. Supp.
10 276, 278 (S.D. Cal. 1986) (citations omitted). A corporation, on the other hand, has
11 dual citizenship—it is a citizen of both the state in which it was incorporated and the
12 state in which it has its principal place of business. *See Bank of Cal. Nat’l Ass’n v.*
13 *Twin Harbors Lumber Co.*, 465 F.2d 489, 492 (9th Cir. 1972) (citing 28 U.S.C.
14 § 1332(c).

15 Active is a citizen of both California and Delaware, as it acknowledged in its own
16 Notice of Removal. (Notice of Removal ¶ 10, ECF No. 1 (citing Compl. ¶ 3, ECF No.
17 1-2).) Whether this Court has jurisdiction over this case therefore depends on the
18 citizenship of the proposed class members. If every proposed class member is a *citizen*
19 of California, then there is no minimal diversity, and the Court must remand this case.
20 *See* 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district
21 court lacks subject matter jurisdiction, the case shall be remanded”). However, if the
22 proposed class members are merely *residents* of California, and therefore include
23 citizens of other states, then this Court may have jurisdiction over the case. Ultimately
24 at issue is whether the FAC’s revised class definition, redefining the class in terms of
25 “citizens” rather than “residents,” constitutes an amendment to, or merely a clarification
26 of, the original Complaint.

27 If the revision is an amendment, as Active argues, then, pursuant to *Abada*, the
28 Court cannot rely on the revised class definition in assessing its jurisdiction over this

1 matter. *See* 300 F.3d at 1117. Thus, “residents” not being equivalent to “citizens”
2 under federal law, the parties would be minimally diverse, and the Court would have
3 had jurisdiction over the case pursuant to CAFA at the time of removal. Accordingly,
4 to support his Motion to Remand, Plaintiff would have to meet the requirements of the
5 Home-State Exception² and provide a factual basis for his contention that at least two-
6 thirds of the proposed class members are California citizens, as required by *Mondragon*
7 *v. Capital One Auto Finance*. 736 F.3d 880, 884 (9th Cir. 2013).³ If the revision is
8 merely a clarification, on the other hand, then at the time of removal the class—defined,
9 per the FAC, in terms of California citizenship—would be comprised solely of
10 California citizens. Thus, Active being a citizen of California as well, minimal diversity
11 would be lacking, and the Court would be required to remand the case.

12 In light of the particular facts of this case, the Court finds that Plaintiff’s revision
13 is a clarification rather than an amendment. As in *Schuster*, where the plaintiff’s
14 amended complaint clarified that he had no intention of pursuing federal claims, here
15 Plaintiff’s amended complaint merely clarifies that his original intent was to litigate on
16 behalf of California citizens only. *See* 319 F. Supp. 2d 1159. Plaintiff’s original
17 Complaint limited the class to a set of California “residents.” (Compl. ¶14, ECF No.
18 1-2). While, under federal law, “resident of” is not equivalent to “domiciled in”—and,
19 therefore, also not equivalent to “citizen of”—the instant action was originally filed in
20 the California state court system, which has no equivalent of diversity jurisdiction and
21 thus does not require the careful distinction between “residents” and “citizens.” Indeed,
22 people often colloquially use the term “residence” interchangeably with the word
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25 ² Pursuant to CAFA’s Home-State Exception, a district court must decline to exercise
26 jurisdiction over a class action when at least two-thirds of the class members and the defendant
are citizens of the state in which the action was originally filed. 28 U.S.C. § 1332(d)(4).

27 ³ In *Mondragon*, the Ninth Circuit held that when a plaintiff moves to remand due to
28 the Home-State Exception, the court should not base its decision “simply on a plaintiff’s
allegations, when they are challenged by the defendant.” *Id.* at 884 (citations omitted). Rather,
“[a] district court makes factual findings regarding jurisdiction under a preponderance of the
evidence standard.” *Id.* (citations omitted).

1 “domicile.”⁴ Thus, after the action was removed to federal court, Plaintiff filed the FAC
2 simply to “make clear that he is suing on behalf of California citizens only.” (Mot. to
3 Remand 2, ECF No. 8-1.)

4 Active argues that Plaintiff’s post-pleading amendment of the class definition is
5 an improper attempt at forum manipulation and thus should have no bearing on whether
6 to remand the action; rather, the class definition provided in the original Complaint,
7 which offered a basis for federal jurisdiction, should control. (Resp. in Opp’n 10, ECF
8 No. 10.) In so arguing, Active relies extensively on *Mondragon*. In *Mondragon*,
9 however, the plaintiff was suing on behalf of “[a]ll persons who . . . purchased a
10 vehicle in California for personal use to be registered in the State of California.” 736
11 F.3d at 883 (emphasis in original). This phrasing—which does not reference the class
12 members’ residency, domicile, or citizenship—did not provide a similar basis for the
13 plaintiff to argue that he intended to limit the class to California citizens. The definition
14 in *Mondragon* was indiscriminate as to the domicile of the class members and instead
15 focused on the vehicles at issue, providing significant details about where those vehicles
16 should have been purchased and registered. Here, on the other hand, the definition is
17 phrased in relation to the class members themselves and instead, rather inartfully,
18 attempts to address the domicile of those persons who meet the class criteria. In light
19 of these significant differences, the Court finds *Mondragon* inapposite.

20 Having reviewed the record, the Court determines that Plaintiff did not file his
21 FAC to manipulate the forum, but rather to clarify a point that happens to bear on this
22 Court’s jurisdiction. Active points to no concrete reason to believe otherwise. In light
23 of the Court’s interpretation of the revised class definition as a clarification rather than
24 an amendment, the Home-State Exception, upon which Active bases its argument, does
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26 ⁴ Compare *Domicile*, Merriam-Webster, [http://www.merriam-webster.com/dictionary/
27 domicile?show=0&t=1402617799](http://www.merriam-webster.com/dictionary/domicile?show=0&t=1402617799) (last visited June 12, 2014) (defining “domicile” as “a
28 dwelling place: place of residence: home”) with *Residence*, Merriam-Webster, [http://www.
merriam-webster.com/dictionary/residence](http://www.merriam-webster.com/dictionary/residence) (last visited June 12, 2014) (defining “residence”
as “the act or fact of dwelling in a place for some time” or “the place where one actually
lives”).

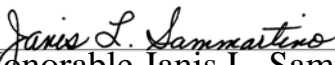
1 not even come into play. Because Plaintiff pleaded a class limited to California
2 citizens, and because Active is also a California citizen, there is no diversity of
3 citizenship. Thus, at the time of removal, this Court lacked subject-matter jurisdiction
4 over this action. Accordingly, pursuant to 28 U.S.C. § 1447(c), the Court **GRANTS**
5 Plaintiff's Motion to Remand.

6 **CONCLUSION**

7 In light of the foregoing, the Court **GRANTS** Plaintiff's Motion to Remand.
8 Accordingly, the Court **HEREBY REMANDS** this action to the Superior Court for the
9 County of San Diego. Moreover, in light of the Court's disposition of this matter, the
10 Court **DENIES AS MOOT** Active's Motions to Dismiss.

11 **IT IS SO ORDERED.**

12 DATED: June 27, 2014

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14 Honorable Janis L. Sammartino
15 United States District Judge
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